Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

4445

No. 721

THE NORTH AMERICAN COMPANY, PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1943.

CERTIORARI GRANTED MARCH 1, 1943.

IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

THE NORTH AMERICAN COMPANY,

Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION TO REVIEW ORDER OF SECURITIES AND EXCHANGE COMMISSION

SULLIVAN & CROMWELL,
Attorneys for Petitioner,
48 Wall Street,
New York, N. Y.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

THE NORTH AMERICAN COMPANY,
Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION.

To the Honorable The United States Circuit Court of Appeals for the Second Circuit:

The petition of The North American Company respectfully shows:

1. Petitioner is a corporation organized and existing under the laws of the State of New Jersey, engaged in the business of holding securities for investment, and having its principal place of business in the City of New York, in the Second Judicial Circuit of the United States.

2. The Securities and Exchange Commission (hereinafter called the "Commission") was established under Section 4, Title I of the Securities Exchange Act of 1934 and is charged with the administration of the Public Utility Holding Company Act of 1935 (hereinafter called the "Act").

3. Petitioner seeks review of an order of the Commission dated April 14, 1942, entered in a proceeding initiated by a notice and order for hearing dated March 8, 1940, directed by the Commission against petitioner and various of its subsidiaries under Section 11(b)(1) of the Act. A copy of said order, dated April 14, 1942, is annexed hereto.

4. The notice and order for hearing, which initiated the proceeding, among other things directed petitioner to file its answer admitting or denying various allegations, among which was an allegation that:

> "The holding company system of The North American Company is not confined in its operations to those of a single integrated public utility system within the meaning of the Act, and to such other businesses as are reasonably incidental, economically necessary or appropriate to the operations of such integrated public utility system."

Section 11(b)(1) of the Act provides as follows:

> "(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:
>
> "To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however*, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

5. On May 16, 1940, petitioner filed its answer to the above mentioned order admitting or denying various allegations and alleging as an affirmative defense the unconstitutionality of Section 11(b)(1) as applied to it. Such answer also sets forth various steps which petitioner proposed to take voluntarily, without, however, waiving any of its constitutional or other rights.

6. On June 7, 1940, petitioner moved to have the proceedings held in abeyance until petitioner had had an opportunity to take the voluntary steps set forth in its answer and until the Commission had made the investigations,

studies and public recommendations required by Section 30 of the Act. On June 18, 1940, petitioner moved for a dismissal of the proceedings on the ground that the Commission was without power to institute proceedings under Section 11(b)(1) until it had made the investigations, studies and public recommendations required by Section 30 of the Act, and further alleging that the notice and order instituting the proceedings prior to the making of such investigations, studies and recommendations would deprive petitioner of property without due process of law in violation of the Fifth Amendment to the Constitution. Both of these motions were denied by the Commission.

7. Hearings were held before a Trial Examiner of the Commission at various times between June 21, 1940 and April 15, 1941, at which evidence was introduced with respect to the extent, operations and relationships of the corporations in the petitioner's holding company system. On May 23, 1941, petitioner's requested findings of fact were filed with the Commission, together with a brief in support thereof. Counsel for the Public Utilities Division likewise filed requested findings of fact and a brief and reply brief, and a reply brief was filed by petitioner on June 2, 1941. Oral argument was had before the Commission on June 2, 1941, at which time the Commission took the matter under advisement and ultimately entered its order of April 14, 1942.

8. The order of the Commission dated April 14, 1942 directs petitioner to divest itself of substantially all of its assets, other than its investments in Union Electric Company of Missouri and its subsidiaries, and in The St. Louis County Gas Company and 60 Broadway Building Corporation.

9. The said order of April 14, 1942, provided that within fifteen days from the date thereof petitioner could file with the Commission a petition for leave to present further argument and proffer additional evidence with respect to the question of whether any integrated public utility system other than the Union Electric system designated in the Commission's findings and opinion should serve as petitioner's principal system. On April 29, 1942 such a petition was filed, and, on information and belief, such petition has not yet been acted on by the Commission.

10. At the hearings before the Trial Examiner, petitioner introduced sworn testimony and documentary evidence in support of the position taken by it with respect to the issues raised by the notice and order for hearing. In its briefs, requests for specific findings of fact and oral argument, petitioner specified the findings of fact and conclusions to which it believed it was entitled by the record and the constructions of the Act for which it contended. Petitioner has at all times reserved and refused to waive its constitutional and legal rights. The objections to the order of the Commission hereinafter set forth and the points hereinafter specified upon which petitioner intends to rely were all duly urged before the Commission.

11. The jurisdiction of this Court is invoked under Section 24 of the Act, which provides that any person aggrieved by an order issued by the Commission under the Act may obtain a review of such order in the Circuit Court of Appeals of the United States within any Circuit wherein such person has his principal place of business.

12. The order to be reviewed hereunder is invalid and void and should be set aside in its entirety for the reason that Section 11(b)(1), as interpreted by the Commission

in its findings and opinion dated April 14, 1942 and as applied in its order of said date, is unconstitutional for the reasons, among others, that it constitutes an improper delegation of legislative power, that it establishes unduly vague and indefinite standards, that it deprives petitioner and its security holders of their property without due process of law, that it exceeds the power of Congress to regulate interstate commerce and imposes arbitrary and unconstitutional restrictions upon such commerce and is not a valid exercise of any power conferred by the Constitution upon Congress.

13. The order to be reviewed hereunder is invalid and void and should be set aside in its entirety, for the reason that it was contrary to the provisions of the Act and to the intent and mandate of Congress for the Commission to proceed by notice and order pursuant to Section 11(b)(1) until the Commission had made its investigations and studies and made public its recommendations as to the type and size of geographically and economically integrated public utility systems which can best promote and harmonize the interests of the public, the investor and the consumer, which investigations, studies and recommendations the Commission is directed to make by Section 30 of the Act; and to institute and carry forward the proceeding and enter orders therein before the Commission had made such studies and published such recommendations deprived petitioner of property without due process of law in violation of the Fifth Amendment to the Constitution.

14. The order to be reviewed hereunder is invalid and void and should be set aside in so far as it directs petitioner to divest itself of its investments in Wisconsin Electric Power Company and its subsidiaries, Wisconsin Gas & Electric Company, Wisconsin Michigan Power Company,

Milwaukee Light, Heat & Traction Company and Hevi-Duty Electric Company (hereinafter collectively called the "Wisconsin Michigan Group"), The Cleveland Electric Illuminating Company and its subsidiaries, The Detroit Edison Company and its subsidiaries, Pacific Gas & Electric Company and its subsidiaries, West Kentucky Coal Company and its subsidiaries, and North American Utility Securities Corporation, for the reasons that

(a) The Commission erred in failing to find the facts requested by petitioner in its requested findings of fact numbered 3.5, 3.10, 3.11, 4.1 to 4.23, inclusive, and 6.1 to 6.38, inclusive.

(b) The Commission erred in finding, without substantial evidence and contrary to substantial evidence, that the electric utility systems of Union Electric Company of Missouri and its subsidiaries, the Wisconsin Michigan Group and The Cleveland Electric Illuminating Company are not located in adjoining states within the meaning of Section 11(b)(1).

(c) The Commission erred in failing to find, contrary to substantial evidence, that the continued combination of the electric utility systems of Union Electric Company of Missouri and its subsidiaries, the Wisconsin Michigan Group and The Cleveland Electric Illuminating Company, or any two thereof, under the control of petitioner is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation or the effectiveness of regulation.

(d) The Commission erred in failing to find, contrary to substantial evidence, that each of the electric utility systems of Union Electric Company of Missouri and its subsidiaries, the Wisconsin Michigan Group and The Cleveland Electric Illuminating Company cannot be operated as an independent system without the loss

of substantial economies which can be secured by the retention of control by petitioner of such system.

(e) The Commission erred in failing to find, contrary to substantial evidence, that petitioner's investments in The Detroit Edison Company, Pacific Gas & Electric Company, West Kentucky Coal Company and North American Utility Securities Corporation, and each of them, are reasonably incidental or economically necessary or appropriate to the operations of its integrated public utility system.

(f) The Commission erred in finding, without substantial evidence and contrary to substantial evidence, that petitioner was required to designate in advance the single integrated public utility system retainable by it under Section 11(b)(1), and in failing to find that any one of the Union, Wisconsin-Michigan and Cleveland systems might be so retained as the principal system, with the other two as additional systems.

(g) The Commission erred in failing to find, contrary to substantial evidence, that under a proper construction of Section 11(b)(1), petitioner is entitled to retain in its holding company system the electric utility systems and other businesses of Union Electric Company of Missouri and its subsidiaries, the Wisconsin Michigan Group and The Cleveland Electric Illuminating Company and its subsidiaries, together with petitioner's investments in The Detroit Edison Company, Pacific Gas & Electric Company, West Kentucky Coal Company and North American Utility Securities Corporation.

15. Petitioner is aggrieved by said order because by reason thereof it is required to divest itself of its valuable investments in The Cleveland Electric Illuminating Company and its subsidiaries, the Wisconsin Michigan Group, The Detroit Edison Company and its subsidiaries, Pacific

Gas & Electric Company and its subsidiaries, West Kentucky Coal Company and its subsidiaries and North American Utility Securities Corporation. Since said order of the Commission, dated April 14, 1942, by its terms must be complied with within one year, unless extended by the Commission in its discretion, it is essential that the review of said order operate as a stay thereof.

16. No previous application for the relief sought in this petition has been made to any other court or judge.

WHEREFORE your petitioner respectfully prays that this Honorable Court review the order dated April 14, 1942, issued by the Commission against your petitioner and others, stay said order of the Commission during the pendency of such review, set said order aside in its entirety and grant such other and further relief as to the Court may seem just and equitable.

THE NORTH AMERICAN COMPANY

By EDWARD L. SHEA
President

SULLIVAN & CROMWELL,
Attorneys for Petitioner,
48 Wall Street,
New York, N. Y.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

EDWARD L. SHEA, being duly sworn, deposes and says that he is President of THE NORTH AMERICAN COMPANY and that he has read the above petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters stated therein to be on information and belief, and as to those matters he believes it to be true.

EDWARD L. SHEA

Sworn to before me this }
12th day of June, 1942. }

ARTHUR MAYER

ARTHUR MAYER
Notary Public, Nassau Co. L. 1903
New York Co. Clerk's No. 533
New York Co. Register's No. 3M-342
Term Expires March 30, 1943

(Seal)

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 14th day of April, A. D., 1942.

IN THE MATTER *of* THE NORTH AMERICAN COMPANY *and* ITS SUBSIDIARY COMPANIES Respondents. File No. 59-10 Public Utility Holding Company Act of 1935—Section 11(b)(1)	Order Requiring Divestiture by Holding Companies and Subsidiaries in Holding Company System of Companies and Properties Owned or Operated Thereby.

The Commission having on March 8, 1940, by notice and order for hearing, supplemented by a notice and order dated August 12, 1940, adding certain companies as respondents, instituted proceedings under Section 11(b)(1) of the Public Utility Holding Company Act of 1935 against The North American Company and its subsidiaries to determine their status under said section, and The North American Company and its subsidiaries having severally answered such notice and order; and

Hearings having been held after due notice, requests for findings of fact on behalf of such companies and briefs in support thereof having been filed, oral argument having been heard; and

The Commission being advised in the premises, and having this day issued its Findings and Opinion with respect to certain action which the Commission finds necessary to limit the operations of the holding company systems of The North American Company and its subsidiaries, including each subsidiary thereof which is a registered holding company and its subsidiaries, to a single integrated public utility system and additional systems and other businesses in accordance with the requirements of Section 11(b)(1) of the Public Utility Holding Company Act of 1935;

IT IS ORDERED, pursuant to Section 11(b)(1):

1. That The North American Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company
Wisconsin Electric Power Company
The Milwaukee Electric Railway & Transport Company
Motor Transport Company
Badger Auto Service Company
Wisconsin Gas & Electric Company
Wisconsin Michigan Power Company
Milwaukee Light, Heat & Traction Company
Hevi-Duty Electric Company
The Cleveland Electric Illuminating Company
The Power & Light Building Company
The Ceico Company
North American Light & Power Company
The Kansas Power and Light Company

Missouri Power & Light Company
The Blue River Power Company
The McPherson Oil & Gas Development Company
Power & Light Securities Company
North American Oil and Gas Company
Northern Natural Gas Company
Argus Natural Gas Company, Inc.
Peoples Natural Gas Company
Illinois Traction Company
Kewanee Public Service Company
Cahokia Manufacturers Gas Company
Western Illinois Ice Company
Illinois Iowa Power Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
Cairo City Gas Company
Champaign and Urbana Gas Light and Coke Company
Danville Gas Light Company
Decatur Electric Company
The Jacksonville Gas Light & Coke Company
Jacksonville Railway and Light Company
St. Louis Electric Terminal Railway Company
Venice Gas Company
Washington Railway and Electric Company
Potomac Electric Power Company
Great Falls Power Company
The Washington and Rockville Railway Company of Montgomery County
Braddock Light & Power Company, Incorporated
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company
West Kentucky Coal Company (New Jersey)
West Kentucky Coal Company (Delaware)
Peoples Coal Company
St. Bernard Coal Company

North American Utility Securities Corporation
Pacific Gas and Electric Company and its subsidiaries
The Detroit Edison Company and its subsidiaries;

2. That Union Electric Company of Missouri, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company;

3. That Washington Railway and Electric Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Great Falls Power Company
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company;

4. That Washington and Rockville Railway Company of Montgomery County, a registered public utility holding company, shall sever its relationship with the company named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect

ownership, control and holding of securities issued and properties owned, controlled or operated by:

Great Falls Power Company;

5. That Northern Natural Gas Company, a registered public utility holding company, shall sever its relationship with the company named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by:

Argus Natural Gas Company;

6. That Illinois Traction Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Western Illinois Ice Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
St. Louis Electric Terminal Railway Company;

and that Illinois Traction Company shall cease to own facilities devoted to, or engage in or control, directly or indirectly, the operation of any water, ice, oil drilling and transportation business now conducted by Illinois Iowa Power Company;

That Illinois Iowa Power Company, a registered public utility holding company, shall sever its relationship with

the companies named hereafter by disposing, or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
St. Louis Electric Terminal Railway Company;

and that Illinois Iowa Power Company shall cease to own or operate any property or facilities now owned or operated by it for the purpose of conducting, directly or indirectly, any water, ice, oil drilling and transportation business now conducted by it, and to cease engaging, directly or indirectly, in any water, ice, oil drilling and transportation business now engaged in by it; and

It is Further Ordered that the respondents, in accordance with Section 11(e) of the said Act, shall comply with this order within one year from the date of its entry (without prejudice to their right to apply for additional time to comply with such order, as provided in such section).

Certain of the respondents in this proceeding which are registered public utility holding companies controlling or operating more than one single integrated public utility system, although heretofore afforded opportunity to indicate their choice of the single integrated system they desire to retain as their principal system, having failed to avail themselves of such opportunity, and the Commission desiring, nevertheless, that further opportunity be afforded such respondents to indicate their views with respect to the choice of a principal system;

It is Further Ordered that notwithstanding the provisions of Rule XII(d) of the Commission's Rules of Prac-

tice, The North American Company, Northern Natural Gas Company, Illinois Traction Company, and Illinois Iowa Power Company may, within 15 days of the date hereof, petition for leave to present further argument and proffer additional evidence as follows:

1. The North American Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system, other than the integrated electric utility system of the Union group as described in our Findings and Opinion herein this day issued, shall serve as its principal system;

2. Northern Natural Gas Company may petition for opportunity to present further argument or additional evidence on the question whether the single integrated gas utility system operated by Argus Natural Gas Company, rather than that operated by Peoples Natural Gas Company, shall serve as its principal system.

3. Illinois Traction Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system controlled or operated by any of its subsidiary companies, other than the major integrated electric utility system operated by Illinois Iowa Power Company, referred to in our Findings and Opinion herein this day issued, shall serve as its principal system.

4. Illinois Iowa Power Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system operated by it or any of its subsidiaries other than the major integrated electric utility system referred to in our Findings and Opinion herein this day issued, shall serve as its principal system.

Provided, however, that the Commission reserves the right to grant, deny or dispose of any such petition according to the merits of the grounds urged in support thereof.

Issue having arisen in this proceeding as to the permissibility of retention of (a) the gas businesses conducted by Union Electric Company of Illinois, Iowa Union Electric Company, and St. Louis County Gas Company, in addition to the integrated electric utility system operated by Union Electric Company of Missouri and its subsidiaries; (b) the gas businesses conducted by Illinois Iowa Power Company, Kewanee Public Service Company, and Cahokia Manufacturers Gas Company, in addition to the electric operations of Illinois Iowa Power Company and Kewanee Public Service Company; (c) the gas operations of Des Moines Electric Light Company and Iowa Power and Light Company, in addition to the electric operations of said companies; and (d) the securities of Cairo City Gas Company, Champaign and Urbana Gas Light and Coke Company, Danville Gas Light Company, Decatur Electric Company, The Jacksonville Gas Light & Coke Company, Jacksonville Railway and Light Company, and Venice Gas Company in the holding company systems of Illinois Traction Company and Illinois Iowa Power Company; and

The Commission deeming it necessary and appropriate that the record be reopened and that additional opportunity be afforded for the presentation of further relevant evidence bearing on such questions;

It is ordered that, at such hour and place, and before such trial examiner and in such manner as the Commission shall by further notice and order designate, additional opportunity shall be afforded for the presentation of further relevant evidence bearing upon the question whether the gas businesses and securities referred to may be retained under clauses (A), (B), and (C) of Section 11 (b)(1) of the Act as systems additional to the integrated electric utility systems of Union Electric Company of Missouri and its subsidiaries; Illinois Iowa Power Company and Kewanee Public Service Company; and Des Moines Electric Light Company and Iowa Power and Light Company, respectively.

Counsel for The North American Company having moved for a dismissal of this proceeding as to certain

of its subsidiaries, named in our Order of March 8, 1940, commencing this proceeding, on the ground that they have been dissolved, or that The North American Company no longer has any interest in them, no objection having been made to this motion, and the Commission being of the opinion that the motion should be granted;

IT IS FURTHER ORDERED that this proceeding be, and the same hereby is, dismissed as to the following named respondents:

Washington and Glen Echo Railroad Company
St. Louis and East St. Louis Electric Railway Company
Wired Radio, Inc.
Wired Rediffusion Developments, Ltd.
St. Charles Electric Light and Power Company
Lakeside Light and Power Company
Wisconsin General Railway Company
Bloomington and Normal Railway, Electric and Heating Company
Decatur Light, Heat and Power Company
Elkhart Electric Light Company
Chicago and Electric Valley Railroad Company.

IT IS PROVIDED, with respect to our Findings, Opinion and Order herein, in their entirety, and with respect to the entry, publication, and service thereof, that they shall be without prejudice to the right of the Commission to enter such other and further appropriate orders from time to time as the Commission may deem necessary to secure compliance by the respondents with the provisions of the Act and the pertinent rules and regulations thereunder in carrying out the provisions of this Order; and

IT IS FURTHER PROVIDED that jurisdiction is reserved to the Commission, notwithstanding this Order, or its entry, publication, and service, to conduct such investigations, hearings, or other proceedings involving any or all of the respondents herein and to make such orders as it shall deem

necessary or appropriate under Section 11 (b)(2) or any other provision of the Public Utility Holding Company Act of 1935.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

(Seal)

IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

THE NORTH AMERICAN COMPANY,
Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION TO REVIEW ORDER OF SECURITIES AND EXCHANGE COMMISSION DATED JUNE 25, 1942

SULLIVAN & CROMWELL,
Attorneys for Petitioner,
48 Wall Street,
New York, N. Y.

IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

THE NORTH AMERICAN COMPANY,
Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION.

To the Honorable the United States Circuit Court of Appeals for the Second Circuit:

The petition of The North American Company respectfully shows:

1. Petitioner is a corporation organized and existing under the laws of the State of New Jersey, engaged in the business of holding securities for investment, and having its principal place of business in the City of New York, in the Second Judicial Circuit of the United States.

2. The Securities and Exchange Commission (hereinafter called the "Commission") was established under Section 4, Title I, of the Securities Exchange Act of 1934 and is charged with the administration of the Public Utility Holding Company Act of 1935 (hereinafter called the "Act").

3. Petitioner seeks review of an order of the Commission dated June 25, 1942, entered in a proceeding initiated by a notice and order for hearing dated March 8, 1940, directed by the Commission against petitioner and various of its

subsidiaries under Section 11(b)(1) of the Act. A copy of the order of the Commission dated June 25, 1942 is annexed hereto.

4. Reference is made to the petition for review of this petitioner previously filed with this Court on June 12, 1942 seeking review of another order of the Commission dated April 14, 1942 in the same proceeding, which petition states the circumstances and facts leading up to the order of April 14, 1942. The said order of April 14, 1942 provided that within fifteen days from the date thereof petitioner could file with the Commission a petition for leave to present further argument and proffer additional evidence with respect to the question of whether any integrated public utility system other than the Union Electric system designated in the Commission's findings and opinion should serve as petitioner's principal system. On April 29, 1942 a petition was filed by the petitioner pursuant to the provision of the order of April 14, 1942, referred to above, with the Commission and was denied by the order of the Commission of June 25, 1942 of which review is hereby sought. No hearing was held, no evidence taken or argument had in connection with the entry of the said order of June 25, 1942.

5. The jurisdiction of this Court is invoked under Section 24 of the Act which provides that any person aggrieved by an order issued by the Commission under the Act may obtain a review of such order in the Circuit Court of Appeals of the United States within any Circuit wherein such person has its principal place of business.

6. The order to be reviewed hereunder is invalid and void and should be set aside in its entirety for the reason that Section 11(b)(1) of the Act does not empower the Commission to enter an order designating a particular single integrated public-utility system for the petitioner, or compelling an election by the petitioner of a particular single integrated public-utility system prior to the expiration of the period within which the Commission's order of April 14,

1942 must be complied with; and for the further reason that if Section 11(b)(1) of the Act is construed to authorize such an order by the Commission it is unconstitutional for the reasons, among others, that it constitutes an improper delegation of legislative power, that it deprives petitioner and its securityholders of their property without due process of law, that it exceeds the power of Congress to regulate interstate commerce and imposes arbitrary and unconstitutional restrictions upon such commerce and is not a valid exercise of any power conferred by the Constitution upon Congress.

7. Petitioner is aggrieved by said order, herein sought to be reviewed, because by reason thereof, disregarding the invalidity of the order of April 14, 1942, it is deprived of its right to select, prior to the expiration of the period within which the Commission's order of April 14, 1942 must be complied with, the single integrated public-utility system which it chooses to retain and is compelled to accept as its principal system that system designated by the Commission in its order of April 14, 1942.

8. No previous application for the relief sought in this petition has been made to any other court or judge.

WHEREFORE, your petitioner respectfully prays that this Honorable Court review the order dated June 25, 1942, issued by the Commission against your petitioner, set said order aside in its entirety and grant such other and further relief as to the Court may seem just and equitable.

THE NORTH AMERICAN COMPANY

By HERBERT C. FREEMAN
Vice-President.

SULLIVAN & CROMWELL,
Attorneys for Petitioner,
48 Wall Street,
New York, N. Y.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

HERBERT C. FREEMAN, being duly sworn, deposes and says that he is Vice-President of THE NORTH AMERICAN COMPANY and that he has read the above petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters stated therein to be on information and belief, and as to those matters he believes it to be true.

HERBERT C. FREEMAN

Sworn to before me this
21st day of August, 1942.

ARTHUR MAYER
Notary Public, Nassau Co. No. 1903
New York Co. Clerk's No. 533
New York Co. Register's No. 3M-342
Term Expires March 30, 1943

[SEAL]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 25th day of June, A. D., 1942.

IN THE MATTER *of* THE NORTH AMERICAN COMPANY **and** ITS SUBSIDIARY COMPANIES Respondents File No. 59-10 Public Utility Holding Company Act of 1935—Section 11(b)(1)	Order Disposing of Petitions for Rehearing and Reargument

The Commission having on April 14, 1942, adopted its findings, opinion and order in proceedings pending pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935 in the matter of The North American Company and Its Subsidiary Companies, Respondents, which, among other things, designated the respective single or principal integrated public utility systems of the several holding companies in the holding company system of The North American Company; and

The said order having afforded an opportunity, notwithstanding the provisions of Rule XII(d) of the Commission's Rules of Practice, to The North American Company to request within fifteen days further argument or the presentation of additional evidence on the question whether any single integrated public utility system other than the integrated electric utility system of the Union group, denoting thereby the electric utility properties of Union Electric Company of Missouri and its subsidiaries, shall serve as the

"principal" system of The North American Company; and having, notwithstanding the said Rule of Practice, afforded to Illinois Iowa Power Company the opportunity to request within fifteen days further argument or the presentation of additional evidence on the question whether any single integrated public utility system operated by it or any of its subsidiaries, other than the major integrated electric utility system referred to in the said findings and opinion, shall serve as its principal system; and having, notwithstanding the said Rule of Practice, afforded to Northern Natural Gas Company the opportunity to request within fifteen days further argument or the presentation of additional evidence on the question whether the integrated public utility system of Argus Natural Gas Company, Inc., rather than that operated by Peoples Natural Gas Company, shall serve as its principal system; and

The North American Company and Illinois Iowa Power Company, having on April 28, 1942, petitioned for leave to present further argument and additional evidence upon certain matters; Northern Natural Gas Company, having on May 8, 1942, petitioned for leave to reopen the proceedings with respect to it and its subsidiaries, which petition was amended on May 27, 1942; the Commission having considered the petitions and being fully advised in the premises, and having this day issued its opinion with respect to the issues raised by said petitions;

IT IS ORDERED, for the reasons set forth in the said opinion, that the said petitions be, and the same hereby are, denied, except insofar as hereinafter set forth:

The petition of Illinois Iowa Power Company having indicated the existence of evidence respecting the retainability of certain oil drilling facilities owned by the company, which evidence was not before the Commission in the course of the original proceedings herein, and the Commission in its discretion deeming it advisable to afford to Illinois Iowa Power Company an opportunity to present such evidence for inclusion in the record herein; and

The petition of Northern Natural Gas Company having indicated the existence of evidence respecting the retainability of certain pipe line facilities owned by its subsidiary, Argus Natural Gas Company, Inc., which evidence was not before the Commission in the course of the original proceedings herein, and the Commission in its discretion deeming

it advisable to afford to Northern Natural Gas Company an opportunity to present such further evidence for inclusion in the record herein;

IT IS FURTHER ORDERED that the record be reopened and a hearing convened at a date to be set by further order of the Commission for the limited purpose of receiving such evidence as Illinois Iowa Power Company and Northern Natural Gas Company may proffer with respect to the retention and operation of said oil and pipe line facilities, respectively, and the evidence to be introduced shall be limited to those issues, as more fully set forth in the said opinion.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

[SEAL]

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

October Term, No. ——

THE NORTH AMERICAN COMPANY,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

TRANSCRIPT OF RECORD

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

October Term, No. ——

THE NORTH AMERICAN COMPANY,
Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

TRANSCRIPT OF RECORD

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UNITED STATES OF AMERICA

BEFORE THE

Securities and Exchange Commission

AT A REGULAR SESSION OF THE SECURITIES AND EXCHANGE COMMISSION, HELD AT ITS OFFICES IN THE CITY OF WASHINGTON, D. C., ON THE 8TH DAY OF MARCH, A. D., 1940.

File Number 59-10

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES

Respondents

NOTICE OF AND ORDER FOR HEARING PURSUANT TO SECTION 11 (b) (1) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Commission having examined, pursuant to Sections 11 (a), 18 (a) and 18 (b) of the Public Utility Holding Company Act of 1935, the corporate structure of The North American Company, a registered holding company, and its subsidiary companies, the relationship among the companies in the holding company system of said The North American Company, the character of the interests thereof and the properties owned or controlled thereby, and it appearing to the Commission from such examination that:

4 *Notice of and Order for Hearing*

I.

1. The North American Company, a registered holding company, is a corporation organized under the laws of New Jersey. It maintains its principal offices for the doing of business in the City of New York, State of New York. The following are subsidiary companies of The North American Company and are also registered holding companies within the meaning of the Public Utility Holding Company Act of 1935 (hereinafter sometimes referred to as the Act).

5

Name	*State of Organization*
Washington Railway and Electric Company	Act of Congress
The Washington and Rockville Railway Company of Montgomery County	Maryland
North American Light & Power Company	Delaware
Illinois Traction Company	Maine
Illinois Iowa Power Company	Illinois
Union Electric Company of Missouri	Missouri
Des Moines Electric Light Company	Maine
Northern Natural Gas Company	Delaware

2. The following are subsidiary companies of The North American Company or of The North American Company and one or more of the companies named in paragraph 1 above and are public utility companies within the meaning of the Act:

6

Name	*State of Organization*	*Nature of Business*
Union Electric Company of Missouri	Missouri	Electric Heating Holding Company
Union Electric Company of Illinois	Illinois	Electric, Gas
Mississippi River Power Company	Maine	Electric
Iowa Union Electric Company	Illinois	Electric, Gas

Name	*State of Organization*	*Nature of Business*
Cupples Station Light, Heat & Power Company	Missouri	Electric, Heating
St. Charles Electric Light & Power Company	Missouri	Electric
Lakeside Light and Power Company	Missouri	Electric
Wisconsin Electric Power Company	Wisconsin	Electric, Heating
Wisconsin Gas & Electric Company	Wisconsin	Electric, Gas, Heating, Transportation
Wisconsin Michigan Power Company	Wisconsin	Electric, Gas, Transportation 8
The Cleveland Electric Illuminating Company	Ohio	Electric, Heating
Potomac Electric Power Company	D. C.	Electric
Braddock Light & Power Company, Incorporated	Virginia	Electric
The Kansas Power and Light Company	Kansas	Electric, Gas, Heating, Ice, Water, Transportation
Missouri Power & Light Company	Missouri	Electric, Gas, Heating, Ice, Water
The Blue River Power Company	Delaware	Electric 9
Nebraska Natural Gas Company	Nebraska	Gas
Kewanee Public Service Company	Illinois	Electric, Gas
Illinois Iowa Power Company	Illinois	Electric, Gas, Heating, Water, Ice, Transportation and Holding Co.
Des Moines Electric Light Company	Maine	Electric, Gas, Heating, Holding Co.
Iowa Power and Light Company	Iowa	Electric, Gas
The St. Louis County Gas Company	Missouri	Gas
Peoples Natural Gas Company	Delaware	Gas
Argus Natural Gas Company, Inc.	Kansas	Gas

10 *Notice of and Order for Hearing*

3. The following are subsidiary companies of The North American Company or of The North American Company and one or more of the companies named in paragraph 1 above, and are not public utility companies within the meaning of the Act, but are engaged in the businesses respectively set forth opposite their names.

	Name	*State of Organization*	*Nature of Business*
11	Union Electric Land and Development Company	Missouri	Land
	St. Louis & Belleville Electric Rwy. Company	Illinois	Transportation
	St. Louis & Alton Railway Company	Illinois	Transportation
	Wisconsin General Railway Company	Wisconsin	Land
	The Milwaukee Electric Railway & Transport Company	Wisconsin	Transportation
	Motor Transport Company	Wisconsin	Transportation
	Badger Auto Service Company	Wisconsin	Auto Service
	Milwaukee Light, Heat & Traction Co.	Wisconsin	Land
12	Hevi-Duty Electric Company	Wisconsin	Furnace Construction
	The Power & Light Building Company	Ohio	Real Estate
	The Ceico Company	Ohio	Metering, Land
	Great Falls Power Company	Virginia	Land
	Capital Transit Company	D. C.	Transportation
	Northern Natural Gas Company	Delaware	Gas Pipe Line
	Montgomery Bus Lines, Incorporated	Maryland	Transportation
	The Glen Echo Park Company	Maryland	Amusement
	The McPherson Oil & Gas Development Company	Kansas	Gas Production
	Power & Light Securities Company	Delaware	Investments

Name	*State of Organization*	*Nature of Business*
Cahokia Manufacturers Gas Company	Illinois	Gas, wholesale
Western Illinois Ice Company	Illinois	Ice
Illinois Terminal Railroad Company	Illinois	Railroad
Central Terminal Company	Missouri	Warehousing
West Kentucky Coal Company	New Jersey	Coal Mining
West Kentucky Coal Company	Delaware	Coal Sales
Peoples Coal Company	Nebraska	Coal Sales
St. Bernard Coal Company	New Jersey	Coal Sales
60 Broadway Building Corporation	New York	Real Estate
North American Utilities Securities Corporation	Maryland	Investments
Wired Radio Inc.	Delaware	Radio development
Wired Rediffusion Developments, Ltd.	England	Radio development

4. The following is a subsidiary company in the holding company system of The North American Company and sells goods to associate companies. It is engaged in the business set forth opposite its name:

Name	*State of Organization*	*Nature of Business*
Union Colliery Company	Missouri	Coal

5. The following are subsidiary companies of The North American Company and of one or more of the companies named in paragraphs 1, 2, and 3 above, and are inactive or in the process of dissolution:

Name	*State of Organization*
East St. Louis & Suburban Railway Company	Illinois
East St. Louis Railway Company	Illinois

Name	*State of Organization*
St. Louis and East St. Louis Electric Railway Company	Delaware
The Washington and Glen Echo Railroad Company	Maryland
North American Oil and Gas Company	Delaware
Bloomington & Normal Railway, Electric & Heating Co	Illinois
The Brighton Electric Light and Power Company	Illinois
Cairo City Gas Company	Illinois
17 Champaign and Urbana Gas Light and Coke Company	Illinois
Chicago and Illinois Valley Railroad Company	Illinois
Danville Gas Light Company	Illinois
Decatur Electric Company	Illinois
The Decatur Light, Heat and Power Company	Illinois
Elkhart Electric Light Co.	Illinois
The Jacksonville Gas Light & Coke Company	Illinois
Jacksonville Railway and Light Company	Maine
St. Louis Electric Terminal Railway Company	Missouri
Venice Gas Company	Illinois

18 6. Ten per centum (10%) or more of the outstanding voting securities of the following companies are directly or indirectly owned, controlled, and held with power to vote by The North American Company (or by a company that is a subsidiary company of said holding company); such companies, however, have filed applications for exemption under Section 2(a)(8) of the Act, and such applications are pending and undetermined:

Name	*State of Organization*	*Nature of Business*
The Detroit Edison Company	New York	Electric
Pacific Gas and Electric Company	California	Electric
Fox River Navigation Company	Wisconsin	Transportation

The following are active subsidiary companies of one or more of the companies named above in this paragraph:

Name	*State of Organization*
Huron Farms Company	Michigan
The Edison Illuminating Company of Detroit	Michigan
The Wayne Mining Company	Michigan
Valley Electric Supply Company	California
Arlington Properties Company, Ltd.	California
Western Canal Company	California
Vallejo Electric Light and Power Company	California

The following are inactive subsidiary companies of one or more of the companies named above in this paragraph:

Name	*State of Organization*
Essex County Light and Power Company, Limited	Canada
The Peninsular Electric Light Company	Michigan
St. Clair Edison Company	Michigan
The Washtenaw Light and Power Company	Michigan
San Joaquin Light and Power Corporation	California
Midland Counties Public Service Corporation	California
Standard Pacific Gas Line, Incorporated	Delaware

7. As of December 31, 1938 the holding company system of The North American Company served with electricity, communities having an aggregate population of 6,202,000 located in the States of:

Illinois	Iowa	Kansas
Michigan	Missouri	Maryland
Ohio	Virginia	Wisconsin

and in the District of Columbia. The electric service areas of said holding company system are shown on the annexed

map marked Exhibit "1" which is made a part hereof as if set out herein in full.

As of December 31, 1938 said holding company system served with gas communities having an aggregate population of 1,332,000 located in the States of

Iowa	Illinois	Kansas
Missouri	Nebraska	Wisconsin
Minnesota		

The gas service areas of said holding company system are
23 shown on the annexed map marked Exhibit "2" and made a part hereof as if set out herein in full.

Said holding company system, through the medium of its various subsidiaries is also engaged in various other businesses as set forth elsewhere herein.

The location of the operations of the public utility subsidiary companies named in paragraph 2 of Section 1 above and the respective mileage distances from the principal offices for the doing of business of The North American Company are shown on the annexed chart, marked Exhibit "3" which is made a part hereof as if set out herein in full.
24

II

8. Union Electric Company of Missouri, referred to in paragraph 2 above, a subsidiary of The North American Company, owns and operates in the State of Missouri, facilities used for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. It also owns and operates in said state, facilities used for the production of steam and for its distribution for heating purposes. Union Electric Company

of Missouri is a public utility holding company within the meaning of the Act, and is registered as such.

9. Union Electric Company of Illinois, referred to in paragraph 2 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the State of Illinois facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in said State facilities used for the production and distribution of manufactured gas for sale at retail and is a gas utility company as defined in the Act.

10. Mississippi River Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the States of Illinois and Iowa, facilities used for the generation and transmission of electric energy for sale and is an electric utility company as defined in the Act.

11. Iowa Union Electric Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the States of Illinois and Iowa, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates, in the State of Iowa, facilities used for the production and distribution of manufactured gas for sale at retail, and is a gas utility company as defined in the Act.

12. Cupples Station Light, Heat and Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the State of Missouri, facilities used for the generation and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in said State facilities used for the supplying of steam heating service.

13. St. Charles Electric Light and Power Company, re-
29 ferred to in paragraph 2 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the State of Missouri, facilities used for the distribution of electric energy for sale, and is an electric utility company as defined in the Act.

14. Lakeside Light and Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the State of Missouri, facilities used for the ditsribution of electric energy for sale, and is an electric
30 utility company as defined in the Act.

15. Wisconsin Electric Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company, owns and operates in the State of Wisconsin, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates facilities in said State used for the production of steam and for its distribution for heating purposes.

16. Wisconsin Gas & Electric Company, referred to in paragraph 2 above, a subsidiary of The North American

Company, owns and operates in the State of Wisconsin, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in said state, facilities used for the production, transmission and distribution of manufactured gas for sale at retail, and is a gas utility company as defined in the Act. Said company also owns and operates in said State facilities used for the production of steam and for its distribution for heating purposes, and facilities used for supplying the transportation service.

17. Wisconsin Michigan Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company, owns and operates in the States of Wisconsin and Michigan facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in the State of Wisconsin facilities used for the production and distribution of manufactured gas for sale at retail, and is a gas utility company as defined in the Act. Said Company also owns and operates in said State facilities used for providing transportation service.

18. The Cleveland and Electric Illuminating Company, referred to in paragraph 2 above, a subsidiary of The North American Company, owns and operates in the State of Ohio, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in said State faciliities used for the production of steam and for its distribution for heating purposes.

19. Potomac Electric Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of Washington Railway and Electric Company, owns and operates in the District of Columbia and in the State of Maryland, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act.

20. Braddock Light & Power Company, Incorporated, referred to in paragraph 2 above, a subsidiary of The North American Company and of Washington Railway and Electric Company and of The Washington and Rockville Railway Company of Montgomery County, owns and operates in the Commonwealth of Virginia, facilities used for the distribution of electric energy for sale and is an electric utility company as defined in the Act.

21. The Kansas Power and Light Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company, owns and operates in the State of Kansas, facilities used for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. It also owns and operates in said State facilities used for the transmission and distribution of natural gas for sale at retail and is a gas utility company as defined in the Act. Said company also owns and operates in said State facilities used for providing steam heat, water, ice and transportation service.

22. Missouri Power & Light Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company,

owns and operates in the State of Missouri, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in said State facilities used for the transmission and distribution of natural gas for sale at retail, and is a gas utility company as defined in the Act. Said Company also owns and operates in said State facilities used for providing heat, water and ice and transportation service.

23. The Blue River Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company, owns and operates in the State of Kansas, facilities used for the generation of electric energy for sale, and is an electric utility company as defined in the Act.

24. Nebraska Natural Gas Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company, owns and operates in the State of Nebraska, facilities used for the transmission and distribution of natural gas for sale at retail, and is a gas utility company as defined in the Act.

25. Kewanee Public Service Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company and of Illinois Traction Company, owns and operates in the State of Illinois, facilities used for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. It also owns and operates in said State, facilities used for the production and distribution of manufactured gas for sale at retail and is a gas utility company as defined in the Act.

40

26. Illinois Iowa Power Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company and of Illinois Traction Company, owns and operates in the State of Illinois, facilities used for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. It also owns and operates in said State facilities used for the production and distribution of manufactured gas for sale at retail and is a gas utility company as defined in the Act. Said Company
41 also owns and operates in said State facilities used for providing heating, water, ice and transportation service. Said Company is a public utility holding company within the meaning of the Act, and is registered as such.

27. Des Moines Electric Light Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company and of Illinois Traction Company and of Illinois Iowa Power Company, owns and operates in the State of Iowa, facilities used for the generation, transmission and distribution of
42 electric energy for sale, and is an electric utility company as defined in the Act. It also owns and operates in said State facilities used for the production and distribution of manufactured gas for sale at retail, and is a gas utility company as defined in the Act. Said Company also owns and operates in said State facilities used for the production of steam and for its distribution for heating purposes. Said Company is a public utility holding company within the meaning of the Act.

28. Iowa Power and Light Company, referred to in paragraph 2 above, a subsidiary of The North American Com-

pany and of North American Light & Power Company and of Illinois Traction Company and of Illinois Iowa Power Company and of Des Moines Electric Light Company owns and operates in the State of Iowa, facilities used for the generation, transmission and distribution of electric energy for sale, and is an electric utility company as defined in the Act. Said Company also owns and operates in said State, facilities used for the production and distribution of manufactured gas and distribution of natural gas for sale at retail and is a gas utility company as defined in the Act.

29. The St. Louis County Gas Company, referred to in paragraph 2 above, a subsidiary of The North American Company, owns and operates in the State of Missouri, facilities used for the production and distribution of manufactured gas and for the distribution of mixed gas for sale at retail and is a gas utility company as defined in the Act.

30. Peoples Natural Gas Company, referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company and of Northern Natural Gas Company, owns and operates in the States of Nebraska, Iowa and Minnesota, facilities used for the transmission and distribution of natural gas for sale at retail and is a gas utility company as defined in the Act.

31. Argus Natural Gas Company, Inc., referred to in paragraph 2 above, a subsidiary of The North American Company and of North American Light & Power Company and of Northern Natural Gas Company, owns and operates in the State of Kansas, facilities used for the transmission and distribution of natural gas for sale at retail, and is a gas utility company as defined in the Act.

III

32. Northern Natural Gas Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power Company owns and operates in the States of Texas, Oklahoma, Kansas, Nebraska, Iowa, Minnesota, and South Dakota, facilities used for the production and transmission of natural gas. It is a public utility holding company within the meaning of the Act, and is registered as such.

33. Union Electric Land and Development Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, own real estate in the State of Missouri.

34. St. Louis and Bellevilie Electric Railway Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns and operates in the State of Illinois, facilities used for providing freight transportation service.

35. St. Louis and Alton Railway Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Union Electric Company of Missouri, owns in the State of Illinois, certain railway properties, leased for operation to Illinois Terminal Railroad Company.

36. Wisconsin General Railway Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Wisconsin Electric Power Company, owns real estate in the State of Wisconsin.

37. The Milwaukee Electric Railway and Transport Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Wisconsin Electric Power Company, owns and operates in the State of Wisconsin, facilities used for the providing of transportation service.

38. Motor Transport Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Wisconsin Electric Power Company, and of The Milwaukee Electric Railway & Transport Company, owns and operates in the State of Wisconsin, facilities used for providing freight transportation service.

39. Badger Auto Service Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Wisconsin Electric Power Company and of The Milwaukee Electric Railway & Transport Company, owns and operates parking lots and gasoline filling stations in the State of Wisconsin.

40. Milwaukee Light, Heat and Traction Company, referred to in paragraph 3 above, a subsidiary of The North American Company, is the owner of lands in the State of Wisconsin.

41. Hevi-Duty Electric Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Milwaukee Light, Heat and Traction Company, is engaged in the design and construction of electric furnaces.

42. The Power & Light Building Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of The Cleveland Electric Illuminating Company, is a real estate company, operating in the State of Ohio.

52

43. The Ceico Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of The Cleveland Electric Illuminating Company, is a land company and is also engaged in business as a metering company.

44. Great Falls Power Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Washington Railway and Electric Company, owns land and an undeveloped water power site in the State of Virginia.

53

45. Capital Transit Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Washington Railway and Electric Company, owns and operates in the District of Columbia and in the State of Maryland, facilities used for providing transportation service.

46. Montgomery Bus Lines, Incorporated, referred to in paragraph 3 above, a subsidiary of The North American Company and of Washington Railway and Electric Company and of Capital Transit Company owns and operates in the State

54 of Maryland, facilities used for providing transportation service.

47. The Glen Echo Park Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of Washington Railway and Electric Company, and of Capital Transit Company, owns and operates an amusement park in the state of Maryland.

48. The McPherson Oil and Gas Development Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power

Company, owns and operates in the State of Kansas facilities used for the production of natural gas.

49. Power & Light Securities Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power Company, is an investment company, having its principal office for the doing of business in the City of Wilmington, State of Delaware.

50. Cahokia Manufacturers Gas Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power Company and of Illinois Traction Company, owns and operates in the State of Illinois, facilities used for the production of manufactured gas for sale at wholesale.

51. Western Illinois Ice Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power Company and of Illinois Traction Company, owns and operates in the State of Illinois facilities used for the manufacture and distribution of ice.

52. Illinois Terminal Railroad Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power Company and of Illinois Traction Company, and of Illinois Iowa Power Company, owns, leases and operates in the States of Missouri and Illinois facilities used for providing freight transportation service.

53. Central Terminal Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of North American Light & Power Company, and of Illinois

Traction Company, and of Illinois Iowa Power Company, owns and operates warehouses in the State of Missouri.

54. West Kentucky Coal Company (New Jersey), referred to in paragraph 3 above, a subsidiary of The North American Company, owns and operates coal mining properties and mineral rights in the State of Kentucky.

55. West Kentucky Coal Company (Delaware), referred to in paragraph 3 above, a subsidiary of The North American Company and of West Kentucky Coal Company (New Jersey) is a coal sales company.

56. Peoples Coal Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of West Kentucky Coal Company (New Jersey) and of West Kentucky Coal Company (Delaware) is a coal sales company.

57. St. Bernard Coal Company, referred to in paragraph 3 above, a subsidiary of The North American Company and of West Kentucky Coal Company (New Jersey) is a coal sales company.

58. 60 Broadway Building Corporation, referred to in paragraph 3 above, a subsidiary of The North American Company, owns and operates real estate in the City of New York, State of New York.

59. North American Utilities Securities Corporation, referred to in paragraph 3 above, a subsidiary of The North American Company, is an investment company with its principal offices in the City of New York, State of New York.

60. Wired Radio, Inc., referred to in paragraph 3 above, a subsidiary of The North American Company, is engaged in experimenting in and developing the art of generating and distributing high frequency current over electric light and power wires with particular attention to the transmission by this means of musical and other programs. 61

61. Wired Rediffusion Developments, Ltd., referred to in paragraph 3 above, a subsidiary of The North American Company and of Wired Radio, Inc., is engaged in experimenting in and developing the art of generating and distributing high frequency current over electric light and power wires with particular attention to the transmission by this means of musical and other programs. 62

IV

62. Union Colliery Company, referred to in paragraph 4 above, a subsidiary of The North American Company and of Union Electric Company of Missouri and of Union Electric Company of Illinois produces coal and sells to associated companies. 63

V

And it appearing further to the Commission from such examination that:

63. The holding company system of The North American Company is not confined in its operations to those of a single integrated public utility system within the meaning of the Act, and to such other businesses as are reasonably incidental, economically necessary or appropriate to the operations of such integrated public utility system.

64 *Notice of and Order for Hearing*

VI

WHEREFORE IT IS ORDERED that the said The North American Company and each of its subsidiary companies hereinbefore named, all of which are made respondents herein, file with the Secretary of the Commission on or before the 18th day of April, 1940, their joint or several answers admitting, denying, or otherwise explaining their respective positions as to each of the allegations of Parts I to V hereof inclusive. Any such answer may include a statement of the
65 claim of the respondents or any of them as to (a) the action, if any, which is necessary and should be required to be taken by any of the respondents (including the divestment of control, securities or other assets), to limit the operations of each of the registered holding companies hereinbefore named to a single integrated public-utility system and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (b) the extent to which any of said respondents which is a registered holding company should be permitted to continue to control one or more additional in-
66 tegrated public-utility systems as may meet the requirements of Clauses (A), (B) and (C) of Section 11(b)(1) of the Act; and (c) the extent to which any of said respondents should be permitted to retain an interest in any business (other than the business of a public-utility company as such), as provided by Section 11(b)(1) of the Act. The answer of any respondent which is a registered holding company may, if such respondent so desires, state that such respondent proposes and is prepared to take such action as will cause it to cease to be a holding company within the meaning of the Act, together with a description of such action and the time within which it proposes to take such action; and

IT IS FURTHER ORDERED pursuant to Section 11(b)(1) of the said Public Utility Holding Company Act of 1935 that a hearing be held at the offices of the Securities and Exchange Commission, 1778 Pennsylvania Avenue, N. W., Washington, D. C., at 10 A. M. on the twentieth day after the date herein fixed for the filing of answers (or such later date as the Commission may prior thereto fix by supplementary notice), to determine (1) such issues, if any, as may arise from the allegations of Parts I to V hereof, inclusive, and the answer or answers filed thereto by the respondents herein or any of them as hereinbefore provided, and by any other party or parties hereto as hereinafter provided; (2) what action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, to limit the operations of the holding company systems of each of the registered holding companies hereinbefore named to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (3) pursuant to such application as may be made herein, the extent to which each of the registered holding companies hereinbefore named shall be permitted to continue to control one or more additional integrated public-utility systems as provided by Section 11(b)(1) of the Act; and (4) pursuant to such application as may be made herein, the extent to which any of the respondents will be permitted to retain any interest in any business (other than that of a public-utility company as such) as provided by Section 11(b)(1) of the Act; and

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IT IS FURTHER ORDERED that the Secretary of the Commission shall serve notice of the hearing aforesaid by mailing a copy of this order by registered mail to said The North

American Company and to each of its subsidiary companies aforementioned, respondents herein, such mailing to be made not less than thirty days prior to the date hereinbefore fixed for the filing of answers; and that notice is hereby given of said hearing to the said respondents and to all other persons, including the security holders and consumers of the said respondents, all States, municipalities and political subdivisions of States within which are located any of the aforesaid utility assets or under the laws of which any of the respondents are incorporated, all State commissions, State securities commissions and all agencies, authorities or instrumentalities of one or more States, municipalities or other political subdivisions having jurisdiction over any of the respondents or over any of the businesses, affairs or operations of any of them, and that such notice shall be given further by general release of the Commission, distributed to the press and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935. Further notice shall be given to all persons by publication in the Federal Register, not later than thirty days prior to the date hereinbefore fixed for the filing of answers, of a notice as follows:

NOTICE OF HEARING UNDER SECTION 11 (b) (1) OF THE PUBLIC UTILITY HOLDINGS COMPANY ACT OF 1935 WITH RESPECT TO THE HOLDING-COMPANY SYSTEM OF THE NORTH AMERICAN COMPANY.

Notice is hereby given that the Securities and Exchange Commission adopted an order on the 8th day of March, 1940, directing that a hearing pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 be held with respect of The North American Com-

pany and each of its subsidiary companies hereinafter called the respondents at the offices of the said Securities and Exchange Commission, 1778 Pennsylvania Avenue, N. W., Washington, D. C., at 10 A. M. on the twentieth day after the date herein fixed for the filing of answers (or such later date as the Commission may prior thereto fix by supplementary notice).

Said order recites that it appears to the Commission that the holding company system of the said The North American Company is not confined in its operations to those of a single integrated public-utility system within 74 the meaning of the said Act, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system.

Said order provides that each respondent shall file its answer to the allegations of said order on or before the 18th day of April, 1940, and thereby shall admit, deny, or otherwise explain the position of such respondent with respect to the allegations set forth in Parts I to V of said notice and order for hearing, and also provides that such answer may include a statement of the claim of the re- 75 spondents or any of them as to (a) the action, if any, which is necessary and should be required to be taken by any of the respondents (including the divestment of control, securities or other assets), to limit the operations of each of the respondents as may be a registered holding company to a single integrated public-utility system and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (b) the extent to which any of said respondents which is a registered holding company should be permitted to continue to control

76 one or more additional integrated public-utility systems as may meet the requirements of Clauses (A), (B) and (C) of Section 11 (b) (1) of the Act; and (c) the extent to which any of said respondents should be permitted to retain an interest in any business (other than the business of a public-utility company as such) as provided by Section 11 (b) (1) of the Act. The answer of any respondent which is a registered holding company may, if such respondent so desires, state that such respondent proposes and is prepared to take such action as will cause it to
77 cease to be a holding company within the meaning of the Act, together with a description of such action and the time within which it proposes to take such action; and

Said order further provides that the purpose of such hearing is to determine (1) such issues, if any, as may arise from the allegations of Parts I to V, inclusive, of said order, and the answer or answers filed thereto by the respondents or any of them as hereinbefore provided, and by any other party or parties hereto as hereinafter provided; (2) what action, if any, is necessary and shall
78 be required to be taken by the respondents in said proceeding, or any of them, to limit the operations of the holding company systems of each of the respondents as may be a registered holding company to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (3) pursuant to such application as may be made in said proceedings, the extent to which each of the respondents as may be a registered holding company shall be permitted to continue to control one or more additional integrated public-utility systems as provided by Section 11 (b) (1) of the Act; and (4) pursuant

to such application as may be made in said proceedings, the extent to which any of the respondents will be permitted to retain any interest in any business (other than that of a public-utility company as such) as provided by Section 11 (b) (1) of the Act; and

Reference is made to said notice and order for hearing for a more complete statement of the various matters to be determined at said hearing, and a copy of said notice and order for hearing is on file and open to public inspection at the offices of said Securities and Exchange Commission 80 in Washington, D. C., and in each of the Regional Offices of said Securities and Exchange Commission, and a Copy of said notice and order for hearing may be had upon written request to the Secretary of said Commission, and said notice and order for hearing is hereby made a part of this notice as if more fully herein set forth at length.

Notice of the aforesaid hearing is particularly given to each of the aforesaid respondents, The North American Company, Washington Railway and Electric Company, The Washington and Rockville Railway Company of Montgomery County, North American Light & Power 81 Company, Illinois Traction Company, Illinois Iowa Power Company, Union Electric Company of Missouri, Des Moines Electric Light Company, Northern Natural Gas Company, Union Electric Company of Illinois, Mississippi River Power Company, Iowa Union Electric Company, Cupples Station Light Heat & Power Company, St. Charles Electric Light & Power Company, Lakeside Light and Power Company, Wisconsin Electric Power Company, Wisconsin Gas & Electric Company, Wisconsin Michigan Power Company, The Cleveland Electric Illuminating Company, Potomac Electric Power

Company, Braddock Light & Power Company, Incorporated, The Kansas Power and Light Company, Missouri Power & Light Company, The Blue River Power Company, Nebraska Natural Gas Company, Kewanee Public Service Company, Iowa Power and Light Company, The St. Louis County Gas Company, Union Electric Land & Development Company, St. Louis & Belleville Electric Rwy. Company, St. Louis & Alton Railway Company, Wisconsin General Railway Company, The Milwaukee Electric Railway & Transport Company, Motor Transport Company, Badger Auto Service Company, Milwaukee Light, Heat & Traction Co., Hevi-Duty Electric Company, The Power & Light Building Company, The Ceico Company, Greaf Falls Power Company, Capital Transit Company, Montgomery Bus Lines, Incorporated, The Glen Echo Park Company, The McPherson Oil & Gas Development Company, Power & Light Securities Company, Cahokia Manufacturers Gas Company, Western Illinois Ice Company, Illinois Terminal Railroad Company, Central Terminal Company, West Kentucky Coal Company (New Jersey), West Kentucky Coal Company (Delaware), Peoples Coal Company, St. Bernard Coal Company, 60 Broadway Building Corporation, North American Utilities Securities Corporation, Wired Radio, Inc., Wired Rediffusion Developments, Ltd., Union Colliery Company, East St. Louis & Suburban Railway Company, East St. Louis Railway Company, St. Louis and East St. Louis Electric Railway Company, The Washington and Glen Echo Railroad Company, North American Oil and Gas Company, Bloomington & Normal Railway, Electric & Heating Co., The Brighton Electric Light and Power Company, Cairo City Gas Com-

pany, Champaign and Urbana Gas Light and Coke Company, Chicago and Illinois Valley Railroad Company, Danville Gas Light Company, Decatur Electric Company, The Decatur Light, Heat and Power Company, Elkhart Electric Light Co., The Jacksonville Gas Light & Coke Company, Jacksonville Railway and Light Company, St. Louis Electric Terminal Railway Company, Venice Gas Company, The Detroit Edison Company, Pacific Gas and Electric Company, Fox River Navigation Company, Huron Farms Company, The Edison Illuminating Company of Detroit, The Wayne Mining Company, Valley Electric Supply Company, Arlington Properties Company, Ltd., Western Canal Company, Vallejo Electric Light and Power Company, Essex County Light and Power Company, Limited, The Peninsular Electric Light Company, St. Clair Edison Company, The Washtenaw Light and Power Company, San Joaquin Light and Power Corporation, Midland Counties Public Service Corporation, Standard Pacific Gas Line, Incorporated, Argus Natural Gas Company, Inc., Peoples Natural Gas Co., and to all other persons, including the security holders and consumers of the said respondents, all States, municipalities, and political subdivisions of States within which are located any of the utility assets owned or operated by any of said respondents or under the laws of which any of the respondents are incorporated, all State Commissions, State securities commissions and all agencies, authorities or instrumentalities of one or more States, municipalities or other political subdivisions having jurisdiction over any of the respondents or over any of the buinesses, affairs or operations of any of them.

Said order further provides that any person proposing to intervene in said proceedings shall file with the Secre-

tary of the Securities and Exchange Commission on or before the 18th day of April, 1940, his request or application therefor as provided by Rule XVII of the Rules of Practice of the said Securities and Exchange Commission, and may, together with such request or application, file a proposed answer in form and content as hereinbefore provided, and which answer shall be deemed effectively filed upon the entry of an order by the Commission granting such request or application.

89 By order of the Securities and Exchange Commission this 8th day of March, 1940

Francis P. Brassor,
Secretary.

(SEAL)

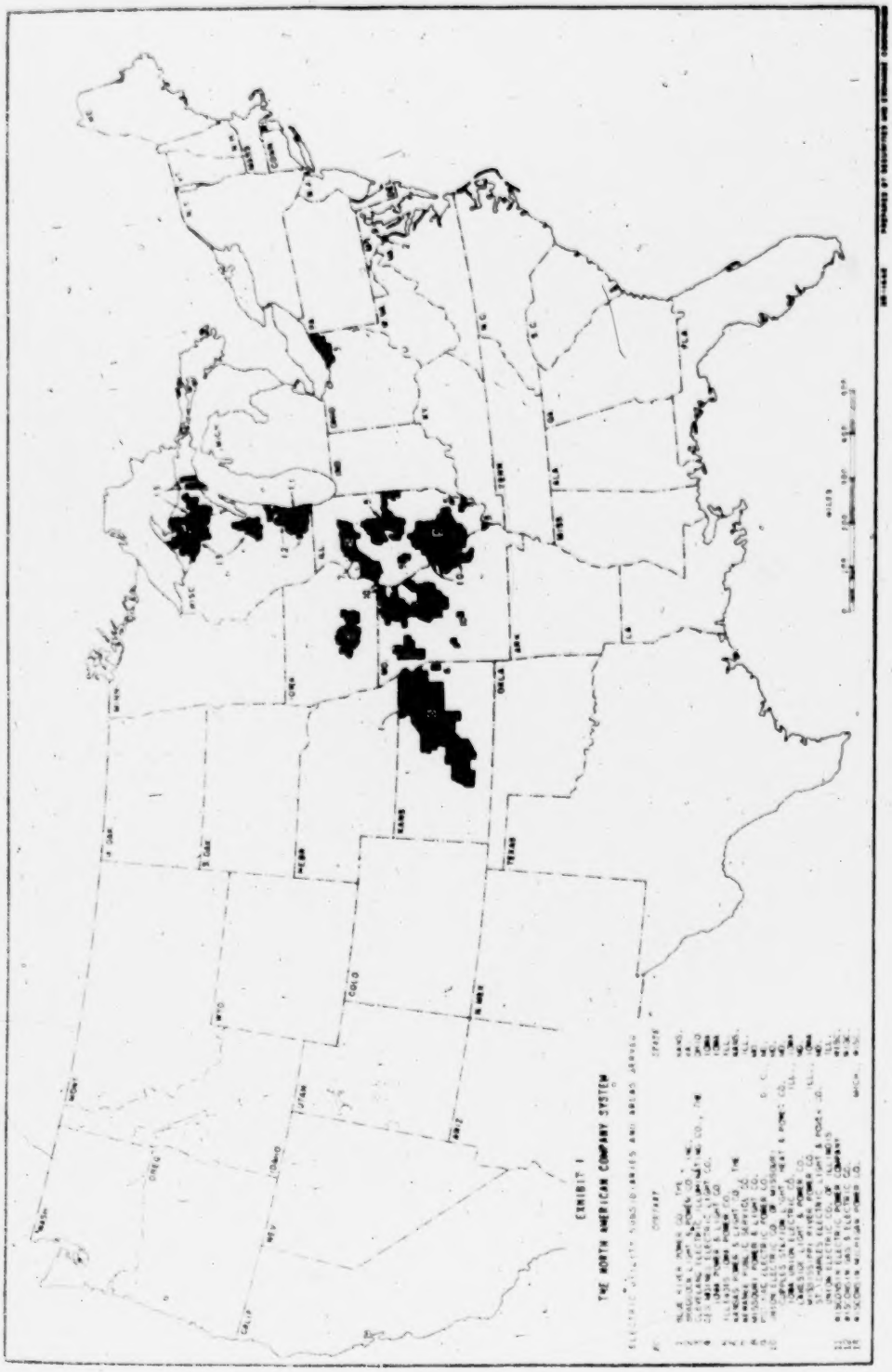
It is further ordered that any person proposing to intervene in these proceedings shall file with the Secretary of the Commission on or before the 18th day of April, 1940, his request or application therefor as provided by Rule XVII of the Rules of Practice, and may, together with such re-
90 quest or application, file a proposed answer in form and content as hereinabove provided, which said answer shall be deemed effectively filed upon the entry of an order by the Commission granting such request or application.

By the Commission.

Francis P. Brassor
Francis P. Brassor,
Secretary.

(SEAL)

MAP



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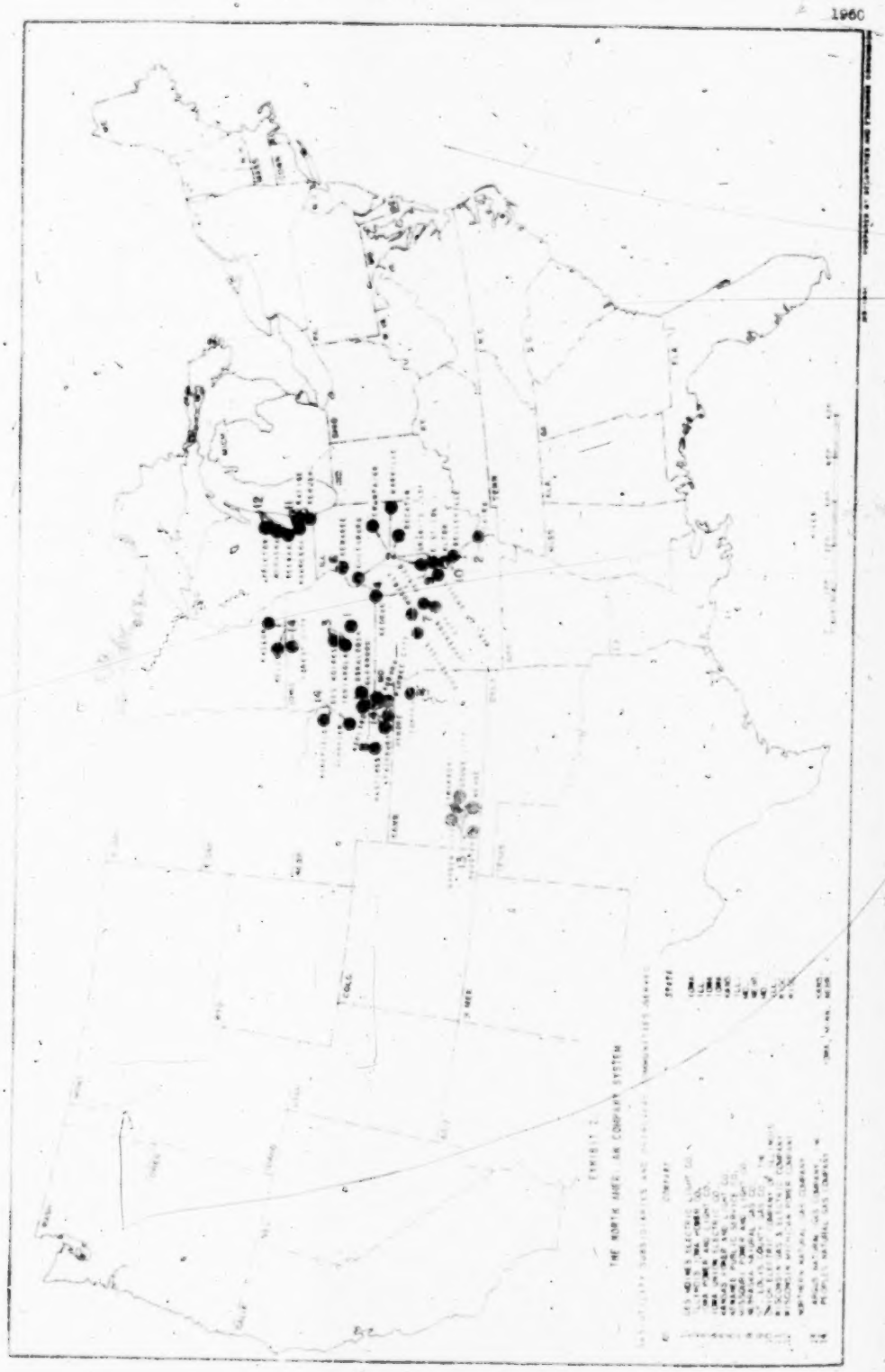

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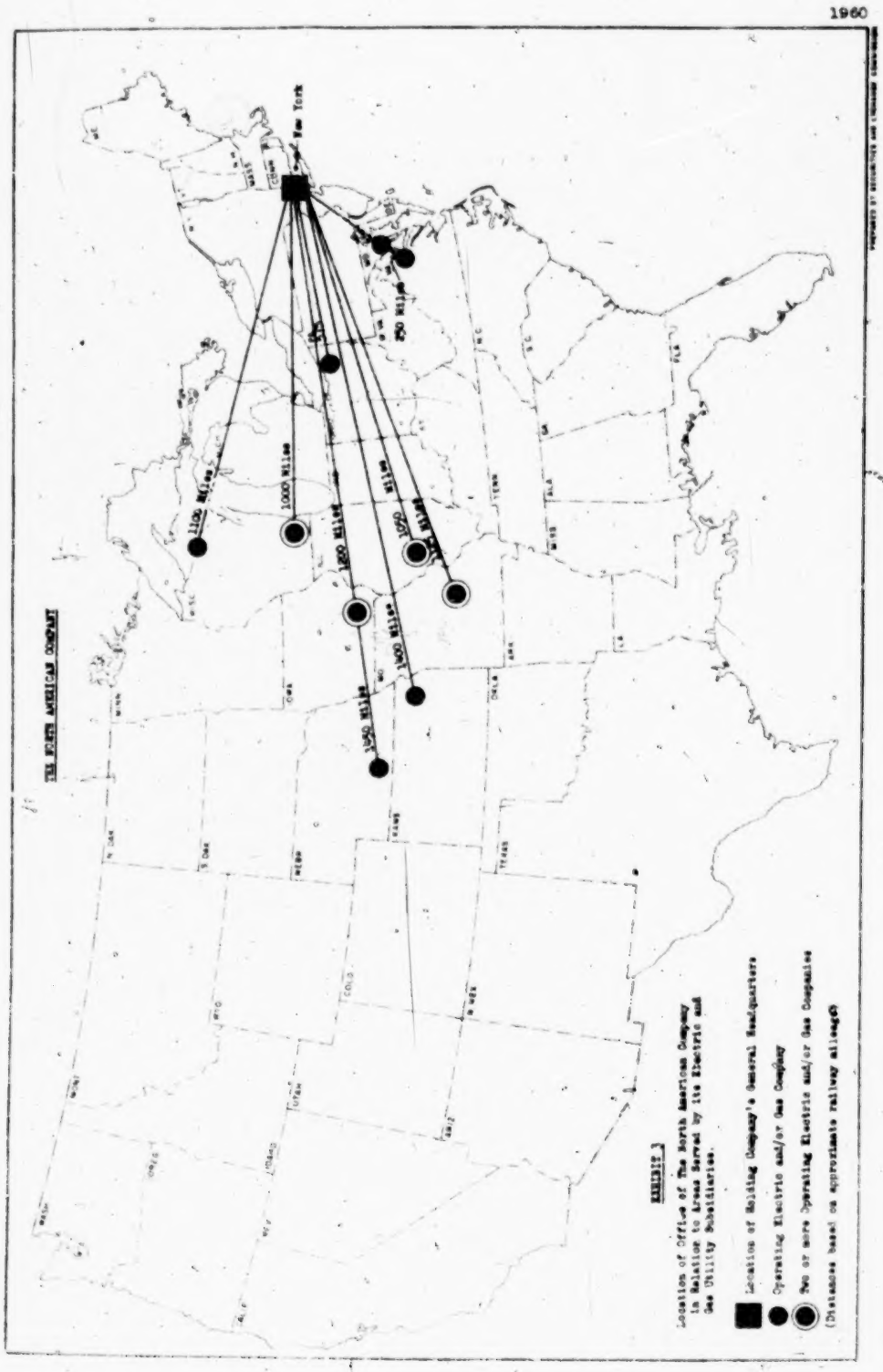
1960
New York
THE NORTH AMERICAN COMPANY
EXHIBIT 1
Location of Office of The North American Company
in Relation to Areas Served by its Electric and
Gas Utility Subsidiaries.
Location of Holding Company's General Headquarters
Operating Electric and/or Gas Company
Two or more Operating Electric and/or Gas Companies
(Distances based on approximate railway mileage)

100 *Application*

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

101 *and its*

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10
Public Utility Holding Company Act of 1935,
Section 11(b)(1)

APPLICATION

102 The respondent, The North American Company, on its own behalf and on behalf of each of the other respondents herein, hereby applies for an extension of the time in which to answer the order herein issued March 8, 1940, for a period of thirty days to and including the 18th day of May, 1940, and requests that the hearing herein be postponed until the twentieth day thereafter (or such later date as the Commission may prior thereto fix by supplementary notice).

The reason for this application is as follows:

The respondent is in the course of formulating a statement of the program to be included in the answer to the

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order herein which will be filed by the respondent pursuant to Part VI of such order. The formulation of such a statement is a difficult and complicated matter involving, as it does, serious questions of policy as well as many legal and practical considerations. The respondent finds that this task of formulation cannot be completed by April 18, 1940, but will require approximately thirty days longer.

WHEREFORE, respondent prays that the time within which it and each of the other respondents herein are required to answer the order herein issued March 8, 1940, be extended 104
for a period of thirty days to and including May 18, 1940, and that the hearing herein be postponed until the twentieth day thereafter (or such later date as the Commission may prior thereto fix by supplementary notice).

Dated, April 12, 1940.

(CORPORATE SEAL) THE NORTH AMERICAN COMPANY

By HERBERT C. FREEMAN
Vice-President.

105

Attest:

REED HARTEL
Secretary

106 *Application*

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

The undersigned, being duly sworn, deposes and says that he has duly executed the attached Application, dated April 12, 1940, for and on behalf of The North American Company; that he is a Vice-President of such company; and that all action by stockholders and directors, and other bodies necessary to authorize deponent to execute and file such instrument, has been taken. Deponent further says that he is
107 familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

HERBERT C. FREEMAN
(Herbert C. Freeman)

Subscribed and sworn to before me, a notary public, this 12th day of April, 1940.

ARTHUR MAYER
ARTHUR MAYER
108 Notary Public, Nassau Co. No. 855
New York Co. Clerk's No. 5
New York Co. Register's No. 1-M-12
Term Expires March 30, 1941

[NOTARIAL SEAL]

109

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 17th day of April, A. D., 1940.

110

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

111

ORDER EXTENDING TIME FOR ANSWER AND POSTPONING DATE FOR HEARING

The Commission having issued a Notice of and Order for Hearing in the above matter pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935; said Notice of and Order for Hearing having required that the respondents file with the Secretary of the Commission their joint or several answers thereto on or before the 18th day of April 1940, and having fixed the date for hearing in these proceedings on the 8th day of May 1940; and The North American Company, on its own behalf and on behalf of each

112 *Order Extending Time for Answer and Postponing Date for Hearing*

of the other respondents herein, having requested that said dates be extended for a period of 30 days; and

It appearing to the Commission from the facts stated in such application that such request is not unreasonable and may appropriately be granted;

IT IS ORDERED that the time for filing answers in these proceedings be and the same hereby is extended until the 18th day of May 1940, and the date for hearing be and is hereby
113 postponed until the 7th day of June 1940.

By the Commission.

FRANCIS P. BRASSOR
Francis P. Brassor,
Secretary.

Per

ARNAL L. DU BOIS

[SEAL]

114

115

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES

116

Respondent.

File No. 59-10

Public Utility Holding Company Act of 1935,
Section 11(b)(1)

Answer of The North American Company, a respondent.

ANSWER

117

I.

The respondent, The North American Company, for its answer to the order herein issued March 8, 1940:

1. Admits each and every allegation with respect to the respondent, and on information and belief admits each and every other allegation, set forth in paragraphs 1 to 62, both inclusive, of said order, except that it:

(a) Denies that either The Washington and Glen Echo Railroad Company or St. Louis and East St. Louis

Electric Railway Company is now a subsidiary company of the respondent or of one or more of its subsidiary companies, as alleged in paragraph 5 of said order, for the reason that The Washington and Glen Echo Railroad Company was dissolved on April 23, 1939, and St. Louis and East St. Louis Electric Railway Company was dissolved on August 5, 1939.

(b) Denies on information and belief that either Midland Counties Public Service Corporation or The
119 Wayne Mining Company is now a subsidiary company of any one or more of the companies named in paragraph 6 of said order, as alleged in paragraph 6 of said order, for the reason that Midland Counties Public Service Corporation was dissolved in December, 1939, and The Wayne Mining Company was dissolved in March, 1940.

(c) Denies that Kewanee Public Service Company owns or operates facilities used for the generation of electric energy, as alleged in paragraph 25 of said order.

(d) Denies that Cahokia Manufacturers Gas Company
120 owns and operates facilities used for the production of manufactured gas for sale at wholesale, as alleged in paragraph 50 of said order, and alleges that said Cahokia Manufacturers Gas Company owns and leases to Illinois Iowa Power Company facilities in the State of Illinois used for the distribution of natural gas.

(e) Denies that either Wired Radio, Inc., or Wired Rediffusion Developments, Ltd., is now a subsidiary company of the respondent, as alleged in paragraphs 3, 60 and 61 of said order, for the reason that on April 1, 1940 the respondent transferred and delivered to Associated Music Publishers, Inc., a corporation which is not a sub-

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sidiary of the respondent or of one or more of its subsidiary companies, all of the outstanding capital stock of Wired Radio, Inc., pursuant to an agreement between the respondent, Warner Bros. Pictures, Inc., and Associated Music Publishers, Inc., dated May 29, 1939.

(f) Denies that the allegations of paragraphs 8 to 62, both inclusive, of said order describe fully in all cases the respective businesses of the various respondents.

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2. In answer to paragraph 63 of said order, respondent alleges that the provisions of the Act are so vague and uncertain that the respondent does not have knowledge or information sufficient to form a belief as to what constitutes a single integrated public utility system within the meaning of the Act, or as to what constitutes such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such system within the meaning of the Act.

II.

123

The respondent, The North American Company, further alleges for an affirmative defense as follows:

3. The business of respondent consists, and has consisted since shortly after its incorporation in 1890, in acquiring, owning and holding stocks and other securities of corporations doing business in different states and groups of states, for diversification and long term investment, as is more fully set forth in Part III of this answer.

4. The corporations in which respondent has so invested are each organized under the laws of one of the States of the

United States, except that one of such corporations is organized under an Act of Congress. Each of the corporations in which respondent has investments maintains an organization responsible to its own board of directors, and each functions under the control of its own board of directors subject to the laws and regulatory agencies of the State in which it is incorporated or does business.

5. Respondent is not engaged in the business of sending or transporting or causing to be sent or transported, goods,
125 commodities or services in commerce with foreign nations or among the several States, or in any other kind of interstate commerce, and such use as respondent makes of the mails or any other means or instrumentality of interstate commerce is merely incidental to the intrastate business of respondent hereinabove described.

6. Rule U-4 of the Commission permitted the respondent to register as a holding company and to take all subsequent action under the Act with full reservation of all its constitutional and legal rights, and in accordance with such rule
126 respondent has at all times fully reserved all its constitutional and legal rights.

7. The respondent, on information and belief, alleges that Section 11(b)(1) of the Public Utility Holding Company Act of 1935, and any other provisions of said Act which may be used to implement the purposes of said Section 11(b)(1), if and to the extent that they purport to require action to be taken by the respondent (including the divestment of control, securities or other assets) to dispose of its valuable investments or any substantial part thereof or to limit the operations of any of the registered holding companies named in

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said order to a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system, are invalid, void and of no effect in that they violate and contravene the provisions of the Constitution of the United States and the Amendments thereto, in the following respects, among others: (a) they are not a valid exercise of the power of Congress to regulate Commerce among the several States, and seek to impose arbitrary and unconstitutional restrictions upon such commerce; are not a valid exercise of the power of Congress to establish Post Offices and post Roads, and seek to impose arbitrary and unconstitutional restrictions upon the use of the mails; are not a valid exercise of any power conferred by the Constitution upon Congress; and are, therefore, in violation of Article I, Section 8 of the Constitution; (b) they attempt unlawfully to delegate legislative power to the Securities and Exchange Commission, in violation of Article I, Section 1 of the Constitution; (c) they attempt to deprive the respondent and its securityholders of their property without due process of law, in violation of the Fifth Amendment to the Constitution; (d) they attempt to take the private property of the respondent and its securityholders for public use without just compensation, in violation of the Fifth Amendment to the Constitution; (e) they attempt to impose excessive fines and cruel and unusual punishments upon the respondent, in violation of the Eighth Amendment to the Constitution; (f) they attempt unlawfully to impose a Federal system of regulation and destruction upon the respondent and thereby attempt to invade and usurp powers reserved to the States, in violation of the Tenth Amendment to the Constitution; (g) they attempt to subject the respondent to

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130 unreasonable searches and seizures, in violation of the Fourth Amendment to the Constitution; and (h) they seek to deprive the respondent of its rights to a judicial determination of all questions of fact affecting its constitutional rights, and thereby deprive the respondent of its property without due process of law, in violation of the Fifth Amendment to the Constitution.

III.

131 The respondent, The North American Company, without waiving any of the rights or contentions hereinabove mentioned, further states its position as follows:

8. The North American Company was incorporated under the laws of New Jersey in 1890 by a group which believed that the economic development and general welfare of this country would be promoted by the creation of a large capital fund which would be available to finance industry in various parts of the United States, particularly in the electrical field, and that this capital fund would itself be protected by poli-
132 cies of prudent and careful investment, coupled with diversification. The North American Company has now had a continuous corporate existence of fifty years, without reorganization. Throughout such fifty-year period the Company has adhered to the basic conceptions which gave it birth and which it believes to have been sound and to be of continuing validity.

The capital funds of The North American Company are now represented by $70,000,000 of debentures, more than $65,000,000 par value of preferred stock and more than $85,000,000 par value of common stock. The aggregate market value of the Company's outstanding securities on May 10,

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1940 was approximately $330,000,000. Such securities are held by more than 2,800 debenture holders, more than 15,000 preferred stockholders and more than 58,000 common stockholders.

Throughout the Company's existence there has never been a default on any security issued by it, and the holders of securities issued by its subsidiaries have constantly benefited by the sound investment policies which it has maintained and fostered.

The North American Company has a record of outstanding achievement in the development of the electrical industry, and its subsidiaries have long been among the acknowledged leaders in the field. Consumers have benefited through a long history of rate reductions while service has constantly improved.

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9. The North American Company made its first investment in public utility enterprises in 1890 by acquisition of an interest in certain small properties in Milwaukee, Wisconsin, and in that year also entered into a contract with Thomas A. Edison for wider applications of electric power. During the ensuing five years its interest was increased by the addition of other properties, all of which were consolidated in 1896 into The Milwaukee Electric Railway and Light Company, now named Wisconsin Electric Power Company, which is today The North American Company's principal investment in Wisconsin.

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In 1901 The North American Company invested in one of the properties in St. Louis, Missouri, now held by Union Electric Company of Missouri, which is today one of the principal investments of The North American Company, operating in St. Louis and the adjoining area.

In 1903 The North American Company acquired its first interest in The Detroit Edison Company, and today holds a substantial investment in the stock of that company although it is not a subsidiary.

In 1922 The North American Company acquired its first interest in The Cleveland Electric Illuminating Company, which is today one of its principal investments.

In 1925 The North American Company acquired an interest in utilities in Washington, D. C., and today its principal investment in that area is in Washington Railway and Electric Company which controls Potomac Electric Power Company.

In 1925 The North American Company acquired control of Western Power Corporation, which held properties in California. Those properties were later sold to Pacific Gas and Electric Company, as a result of which The North American Company today holds a substantial investment in that company, although it is not a subsidiary.

In 1926 The North American Company acquired a substantial interest in North American Light & Power Company, the principal properties of which are in Illinois, Iowa, Missouri and Kansas.

10. All of these utility investments by The North American Company have been continuous and, in the case of the four major operating companies in Milwaukee, St. Louis, Cleveland and Washington, have been enlarged through substantial increase in the common stock equities. The money so provided has not only financed a large part of the property additions, but it has also furnished a basis of junior equity money required by the operating companies in order to enable them to obtain additional funds they needed for property additions through the sale of bonds and preferred stocks.

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11. Under the law the responsibility for the management of the business and for the protection of the investments of The North American Company and the interests of its security holders is vested in the Board of Directors of The North American Company. These Directors believe, and it has long been their guiding principle, that the interests of their security holders must and do coincide with public policy and the general welfare. The Directors have carefully examined the Holding Company Act to ascertain whether it embodies any new and valid rule of Federal public policy, which should change their policies for The North American Company, but find that such is not the case, assuming that the Act is to be reasonably interpreted and applied. Section 1(b) of the Act enumerates certain specific abuses and Section 1(c) states that the provisions of the Act are to be interpreted with a view to the elimination of such abuses. Such abuses have never been present in the holding company system under respondent's control and the future avoidance of such abuses is already assured by the controls and regulation established by Federal and state statutes. As to Section 11(b)(1) of the Act, respondent's Directors are unable to find any proper basis for its application to The North American Company, and its provisions are so vague and uncertain in their scope that they do not, in law or in fact, provide a clear and practical guide to corporate action.

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12. In the course of performance of their legal duty to manage the affairs of The North American Company in accordance with their best judgment and their own long established policies, its directors have taken or caused to be taken important steps designed to simplify the corporate structure of the holding company system and to dispose of

certain assets. The action of respondent's directors in these respects has coincided with what respondent believes to have been the views of the Commission as to the intent of Section 11(b)(2) of the Act. Among such steps during recent years may be noted:

(a) The elimination in 1939 of North American Edison Company, the principal intermediate holding company in the North American system, which had approximately $129,000,000 of securities outstanding. This was
143 an operation of such magnitude, involving the refunding of some $104,000,000 of securities, that it required the continued and concentrated attention of the management of The North American Company over an extended period and was particularly cited in the Fifth Annual Report of the Commission as having "involved the largest financing under the Public Utility Holding Company Act of 1935 to that time".

(b) The recapitalization in 1937 of Illinois Power and Light Corporation (now named Illinois Iowa Power Company) which involved a readjustment of over
144 $74,000,000 par amount or stated value of preferred and common stocks, and which was cited in the Third Annual Report of the Commission. The development and carrying out of this plan required intensive work over an extended period. Although the plan was approved by the stockholders and by the Commission, a few stockholders brought an injunction suit, which is still pending, with the result that the fruition of the benefits which the recapitalization offered to securityholders has been delayed.

(c) The simplification in 1937 of the corporate structure of the holding company system of Union Electric

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Light and Power Company (now named Union Electric Company of Missouri). The simplification was accomplished by the merger of four public utility companies, Union Electric Light and Power Company of Illinois, Power Operating Company, Alton Light & Power Company and Alton Gas Company, which operated in and around Alton and East St. Louis, Illinois, into the East St. Louis Light & Power Co., a public utility company operating in the same area, its name being changed to Union Electric Company of Illinois.

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This was cited in the Third Annual Report of the Commission as follows:

> "There is one outstanding example of the type of transaction by which the corporate structure of a holding company system was simplified through a merger of a number of subsidiary companies into one operating company. * * *
>
> "The result of these transactions, therefore, was the reduction of the number of subsidiaries in the North American Company system by four and a very substantial simplification in the corporate structure of its Missouri and Illinois subsidiaries."

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These were transactions of magnitude, accompanied by the redemption of over $80,000,000 of securities and the public issue of $95,000,000 of new securities.

(d) The merger in 1938 of the former Wisconsin Electric Power Company into The Milwaukee Electric Railway and Light Company (now named Wisconsin Electric Power Company) and the segregation of the transportation properties of the latter company into a new company, The Milwaukee Electric Railway & Transport Company. This was also a transaction of magni-

148 tude, involving the redemption of over $76,000,000 of securities and the issue of over $78,000,000 of new securities.

(e) The dissolution during the past five years of fourteen subsidiary companies of Union Electric Company of Missouri: Central Mississippi Valley Electric Properties, a voluntary trust, holding public utility securities, was terminated in 1937 after transferring on liquidation all of its assets to Union Electric Company
149 of Missouri. Fort Madison Electric Company and Dallas City Light Company, electric utility companies operating in and around Fort Madison, Iowa, and Dallas City, Illinois, respectively, were dissolved in 1937 after transferring their property to Keokuk Electric Company (now named Iowa Union Electric Company). Missouri Transmission Company, an electric utility company owning a transmission line in Missouri, was dissolved in 1938 after transferring its property to Mississippi River Power Company. Blue Goose Motor Coach Co., Inc., a transportation company, was dissolved in 1936 after the sale
150 of substantially all of its tangible assets to non-affiliated interests. St. Louis Electric Light and Power Company, The East St. Louis and Suburban Company, East St. Louis Supplies Company, The Edison Electric Illuminating Company of Carondelet, The Light and Development Company of St. Louis, The Electric Company of Missouri, National Subway Company of Missouri, Carondelet Electric Light and Power Company and St. Louis and East St. Louis Electric Railway Company, all of which had become inactive companies, were also dissolved during this period.

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(f) The dissolution during the past five years of the following thirteen additional companies: Edison Securities Corporation, an investment company, and Northwest Trading Company, a non-utility company, were dissolved in 1935. Western Power Corporation, a public utility holding company subsidiary of The North American Company, was dissolved in 1936, and its assets were distributed to the common stockholders, the principal stockholder of which was The North American Company. The Washington Interurban Railroad Company, Washington Coach Company, Washington Suburban Coach Company and Washington and Maryland Railway Company, which had become inactive companies, were dissolved in 1936. The Illuminating Securities Company, a non-utility company, was dissolved in 1937. The Power Construction Company, Overton-Williams-Pinner Company, West Kentucky Property Company and Potomac Electric Appliance Company, non-utility companies, were dissolved in 1938. The Washington and Glen Echo Railroad Company, which had become an inactive company, was dissolved in 1939.

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(g) The merger, dissolution or transfer to non-affiliated interests during the past five years of thirty companies in North American Light & Power Company's system: The principal electric and gas utility properties owned by subsidiary companies in Kansas were consolidated in 1935 into one company through the acquisition by The Kansas Power and Light Company of the properties of The United Power & Light Corporation (of Kansas), The McPherson Gas Company, The Kingman County Gas Company, Public Service Company of Kansas and The Peoples Ice and Fuel Company, all of these

154 companies, other than The Kansas Power and Light Company, being dissolved. In 1935 and 1936, Illinois Power and Light Corporation (now named Illinois Iowa Power Company) sold its interest in the common stock of Super-Power Company of Illinois to Commonwealth Edison Company, which is not affiliated with The North American Company. The stock of The Kansas Pipe Line & Gas Company, a gas transmission company, was sold in 1936 to non-affiliated interests. Mills County Power Company, a public utility holding company, was dis-
155 solved in 1936. Six railroad companies, Illinois Terminal Railroad Company (previously named Illinois Terminal Company), Alton & Eastern Railroad Company, Illinois Traction, Inc., St. Louis and Illinois Belt Railway, The St. Louis, Troy and Eastern Rail Road Company and The Alton Terminal Railway Company, which owned or operated railway properties in central Illinois, were consolidated in 1937 into a new corporation, Illinois Terminal Railroad Company. The assets of Des Moines Gas Company, a gas utility company, were ac-
156 quired by Iowa Power and Light Company in 1938 and Des Moines Gas Company was dissolved. Le Roy Electric Light, Power and Heating Company and Champaign Depot and Terminal Company were merged in 1938 into Venice Gas Company. Iowa Transmission Line Company, an electric utility company, was dissolved in 1939 after the sale of its electric properties to Mississippi River Power Company. The Atchison Railway Light and Power Company, The Salina Light, Power and Gas Company, The United Water, Gas and Electric Company, North American Light & Power Company (Maine), Western Railways and Light Company, Cairo Railway

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and Light Company, The Kansas Public Service Company, Des Moines Electric Company, Illinois Terminal Transportation Co., Illinois Terminal Railroad Company, Natural Gas Distributing Company and North American Pipe Line Company, all of which had become inactive companies, were also dissolved during this period.

(h) The North American Company disposed in 1938 of its ownership and control of Associated Music Publishers, Inc. and Breitkopf Publications, Inc., music companies, and Muzak Corporation, a wired music program 158 company, pursuant to an agreement between The North American Company and Warner Bros. Pictures, Inc., dated April 1, 1938. As already stated in paragraph 1 above, on April 1, 1940 The North American Company disposed of its ownership and control of Wired Radio, Inc., pursuant to an agreement between The North American Company, Warner Bros. Pictures, Inc., and Associated Music Publishers, Inc., dated May 29, 1939.

13. In further exercsie of their judgment with respect to the management of the affairs of The North American 159 Company, its directors propose, subject to due corporate action:

(A) To dispose of or otherwise liquidate the investment of The North American Company in North American Utility Securities Corporation, an investment company. It is planned to consummate this step as promptly as practicable.

(B) To dispose of the interest of The North American Company in West Kentucky Coal Company if and as soon as a satisfactory sale can be made. The North

160 American Company has for some time sought this result, but the conditions in the coal industry have been such that no purchaser could be found, even on terms involving some sacrifice of intrinsic value. The North American Company is unable, on this account, to forecast the time within which such sale can be effected.

(C) To dispose of its investment in The St. Louis County Gas Company, preferably, in effect, through an exchange for the electrical property in St. Louis now
161 owned by The Laclede Gas Light Company and Laclede Power & Light Company, thereby achieving a further separation of electric and of gas properties, and further integration of each of these two types of service. The North American Company and the owners of the Laclede property have for some time sought this result, and the matter is now under active consideration. It is believed that, with the cooperation of the Laclede companies, this result can be achieved within the current year.

(D) To reduce or modify the form of the investment of The North American Company in Washington Railway
162 and Electric Company to such extent that The North American Company does not have effective control over Washington Railway and Electric Company. In initiation of this program The North American Company in December 1939 paid out, as a special dividend to its stockholders, approximately six per cent of its holdings of common stock of Washington Railway and Electric Company. The North American Company is also prepared to dispose of its controlling interest in Washington Railway and Electric Company through public distribution provided there is a reasonable public market, but it is believed that prior to such relinquishment of control there should be

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a simplification of the corporate structure by a merger of Washington Railway and Electric Company with its subsidiary, Potomac Electric Power Company. This matter has already been the subject of discussion with the regulatory authorities.

(E) To reduce or modify the form of the investments of The North American Company in Wisconsin Electric Power Company, in Wisconsin Gas & Electric Company and in Wisconsin Michigan Power Company to such extent that The North American Company does not have 164
effective control over any of those companies. The initial steps have already been taken (i) by improving the capital structure of Wisconsin Electric Power Company so as to reduce the amount required to service securities senior to the common stock, and (ii) for establishing a public market for the common stock of Wisconsin Electric Power Company. Previously, the entire common stock of that company had been owned by The North American Company. The Company proposes to proceed with the program by public or other distribution of the major portion of its holdings of stock in the three Wisconsin companies 165
as soon as conditions permit without sacrifice of intrinsic values.

(F) To dispose of its investment in North American Light & Power Company when conditions permit without sacrifice of intrinsic values. It may be advantageous to defer this pending simplification and improvement of the capital structure of the North American Light & Power system. Furthermore, certain of the properties controlled by North American Light & Power Company are now in part, and should, in the opinion of The North American Company, be further integrated with the properties of

166 Union Electric Company of Missouri by adding them to the system centering on St. Louis. The problem of creating for the North American Light & Power system a corporate structure which is simple and sound is a problem of considerable difficulty. The North American Company has already, during the seven years it has had control of North American Light & Power Company, been engaged on steps designed to promote simplification and adjustment to earning power of securities in the North American Light & Power system, such as the recapitaliza-
167 tion in 1937 of Illinois Power and Light Corporation (now named Illinois Iowa Power Company), mentioned above, which is now involved in litigation brought by a few stockholders. Further steps are obviously called for, the accomplishment of which can much more readily be assured if control of North American Light & Power Company is retained for the time being by The North American Company. It is impracticable for The North American Company to forecast with any accuracy the time required to simplify the corporate and financial structure of the North American Light & Power system
168 as a preliminary to divestment, because these matters involve public stockholders' assent and the possibility of unavoidable delay through litigation as is now occurring in the case of Illinois Iowa Power Company. The North American Company believes, however, that substantial progress can be made within a reasonable period of time.

14. The foregoing programs are in line with what The North American Company believes to be the views of the Commission as to the operation of Section 11(b)(1). If these programs can be carried out as now envisaged they will involve the disposal through sale, exchange or other means of

perhaps one-third of the present assets of The North American Company. The disposal of these particular assets would result in the divestment of The North American Company's control over electric and gas utility companies with assets having a carrying value on the books of the respective companies of approximately $450,000,000 and over other companies (including traction companies) with assets having a carrying value of approximately $200,000,000. This would, in substance, leave The North American Company, in respect of integrated systems, with (i) a system already substantially integrated, based on St. Louis and conducting operations within the adjoining states of Missouri, Illinois and Iowa, and (ii) one additional integrated system based on Cleveland.

The foregoing programs do not contemplate any present change in the Company's investments in The Detroit Edison Company and Pacific Gas and Electric Company, which investments do not constitute control.

15. Upon completion of the foregoing programs, the Company will have retained the major investments referred to in the foregoing paragraph, and will also have the proceeds received upon disposal of certain assets referred to above. Such proceeds will be available as capital resources for the acquisition of other properties which can be advantageously integrated with the systems based on St. Louis and Cleveland, or for improvements and additions to those systems, or for other investment in accordance with the sound principles which have characterized The North American Company's past activities, and with the benefit of fifty years of practical experience. The Company believes that a constructive interpretation or evolution of the Act will provide continued opportunity for the employment of its resources both in the public interest and in the interest of its stockholders.

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16. The programs set forth above will involve great procedural difficulties in view of the provisions of many applicable Federal and state laws, the rules of the Commission and of local or state regulatory commissions and authorities, and the provisions of corporate charters, indentures and mortgages. It is believed that these programs can be carried through in two or three years, on the assumption that the executives of The North American Company are able to devote thereto their active and virtually continuous attention. Even this time forecast would have been impossible had not
173 The North American Company been actively engaged during the past several years in consummating a number of fundamental corporate adjustments designed to give it greater flexibility of action.

17. In the opinion of The North American Company it would be impracticable and would serve no useful purpose, nor would it be realistic, at the present time to consider further adjustments which, in view of the magnitude and complexity of the plans set forth above, could not in fact be realized contemporaneously therewith.

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WHEREFORE, respondent prays that the Commission grant such relief in the premises as may be just and proper under the laws and Constitution of the United States of America.

Dated, May 16, 1940.

THE NORTH AMERICAN COMPANY

(SEAL)

By E. L. SHEA
President
60 Broadway,
New York, N. Y.

Attest:

REED HARTEL
Secretary

Motion 175

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

THE NORTH AMERICAN COMPANY 176

and its

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10
Public Utility Holding Company Act of 1935,
Section 11(b)(1)

Motion of The North American Company, a respondent, For Adjournment. 177

MOTION

The North American Company, a respondent in this proceeding, respectfully moves that the hearing in this proceeding be adjourned, subject to the further order of the Commission, and that this proceeding be held in abeyance, on the following grounds:

(1) That the answer of The North American Company filed with the Securities and Exchange Commission on May

178 16, 1940 in this proceeding sets forth the position of The North American Company with respect to the allegations of the Commission contained in the Notice of and Order for Hearing of the Commission, and that no further action should be taken in this proceeding until The North American Company has had a fair and full opportunity to proceed in the manner indicated in said answer, and particularly Paragraph 13 of Part III thereof.

(2) That no further action in this proceeding should be
179 taken until the Commission has made its investigations and studies and made public its recommendations as to the type and size of geographically and economically integrated public utility systems which can be best promote and harmonize the interests of the public, the investor and the consumer, which investigations, studies and recommendations the Commission is directed to make by Section 30 of the Act.

In filing this motion The North American Company reserves the right to take such other action as may be deemed appropriate in view of the Commission's action with respect
180 to this motion, including the right to move for further adjournment or for the dismissal of this proceeding, on constitutional or other grounds.

This motion is accompanied by a brief in support hereof.

This motion is made and the accompanying brief is filed in full reliance on Rule U-4, as amended, of the Commission under the Act. Neither the making of this motion nor the filing of such brief, nor the acceptance of or reliance upon any order, rule or regulation, nor the compliance with any provisions of the Act, of the rules and regulations thereunder, or of any order or direction of the Commission shall be deemed a waiver of any constitutional or legal right of

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The North American Company or of any of its subsidiary companies, all of which are hereby expressly reserved.

June 7, 1940.

SULLIVAN & CROMWELL,
Attorneys for Respondent,
The North American Company,
48 Wall Street,
New York, N. Y.

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184 *Order Adjourning Hearing*

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 7th day of June, A. D., 1940.

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185 IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

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186 **ORDER ADJOURNING HEARING**

The Commission having heretofore, by order duly entered on April 17, 1940, fixed the date for hearing in the above entitled proceeding as June 7, 1940, and the respondent The North American Company having filed on said date a motion for the adjournment of the hearing in said proceeding and that said proceeding be held in abeyance:

IT IS ORDERED that said hearing be, and the same is hereby adjourned to June 21, 1940, at ten o'clock in the forenoon, in the Washington offices of the Commission, 1778 Pennsyl-

vania Avenue, N.W., Washington, D. C., and that in all other respects the motion be and it hereby is denied.

By the Commission.

FRANCIS P. BRASSOR,

(SEAL) Secretary.

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UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

191

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

Public Utility Holding Company Act of 1935,
Section 11(b)(1)

MOTION TO DISMISS

192 The North American Company, a respondent herein, respectfully moves for an order dismissing this proceeding on the ground that the Commission is without power or jurisdiction under the Public Utility Holding Company Act of 1935 and the laws and Constitution of the United States to make its notice and order herein dated March 8, 1940, for the following reasons:

1. The Commission is authorized and directed by Section 30 of the Public Utility Holding Company Act of 1935 (hereinafter referred to as the "Act") "to make studies and investigations of public utility companies, the territory served or which can be served by public utility companies

and the manner in which the same are and can be served, to determine the sizes, types and locations of public utility companies which do and can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy" and upon the basis of such investigations and studies to "make public from time to time its recommendations as to the type and size of geographically and economically integrated public utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the 194
interests of the public, the investor and the consumer", and no recommendations have been made public by the Commission in accordance with the terms of Section 30 of the Act.

2. It is contrary to the provisions of the Act itself and to the intent and mandate of Congress for the Commission to proceed by notice and order pursuant to Section 11(b)(1) until the Commission has made its investigations and studies and made public its recommendations as to the type and size of geographically and economically integrated public utility systems which can best promote and harmonize the interests 195
of the public, the investor and the consumer, which investigations, studies and recommendations the Commission is directed to make by Section 30 of the Act.

3. Congress intended that these Respondents have available, and these Respondents and each of them were entitled under the Act to have made public from time to time, the Commission's recommendations in accordance with the directions contained in Section 30, so as to allow a reasonable period of time for voluntary compliance with Section

196 *Motion to Dismiss*

11(b)(1) before the Commission instituted proceedings to force compliance therewith.

4. Said notice and order, and requiring Respondents to proceed with a hearing thereon, before the Commission has made such studies and published such recommendations, would deprive Respondents of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

197 In filing this motion The North American Company reserves the right to take such other action as may be deemed appropriate in view of the Commission's action with respect to this motion, including the right to move for an adjournment of the hearing herein or for the dismissal of this proceeding on constitutional or other grounds.

This motion is made and filed in full reliance on Rule U-4, as amended, of the Commission under the Act. Neither the making of this motion nor the acceptance of or reliance upon any order, rule or regulation, nor the compliance with any provisions of the Act, of the rules and regulations there-
198 under, or of any order or direction of the Commission shall be deemed a waiver of any constitutional or legal right of The North American Company or of any of its subsidiary companies, all of which are hereby expressly reserved.

In support of this motion The North American Company refers to Part II of its brief dated June 7, 1940, filed in support of its motion of the same date that the hearing of this proceeding be adjourned subject to the further order of the Commission, and that this proceeding be held in abeyance, and to the arguments and points therein made as fully as though said Part II of said brief accompanied this motion.

This motion is based on the records and files of the Commission under said Act.

WHEREFORE, respondent The North American Company prays that the Commission dismiss this proceeding.

SULLIVAN & CROMWELL,
Attorneys for Respondent
The North American Company,
48 Wall Street,
New York, N. Y.

June 17, 1940.

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 20th day of June, A. D., 1940.

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203 IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

ORDER DENYING MOTION TO DISMISS

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The respondent, The North American Company, having on June 18, 1940, filed with this Commission a motion to dismiss the above entitled proceeding, and the Commission having fully considered the same, and finding that the ground of said motion is substantially identical with the second ground assigned by said respondent for the granting of a motion filed with this Commission on June 7, 1940, whereby said respondent moved that the hearing in said proceeding be adjourned subject to further order of the Commission, and that said proceeding be held in abeyance, which motion was by order of this Commission of June 7, 1940

denied, except to the extent that the hearing theretofore set herein for June 7, 1940, was continued to June 21, 1940 and it appearing to the Commission, and the Commission finding that the present motion to dismiss this proceeding should likewise be denied;

IT IS ORDERED that the motion filed on June 18, 1940, by respondent, The North American Company, for the dismissal of the above entitled proceeding be, and the same is hereby denied.

By the Commission. 206

FRANCIS P. BRASSOR

FRANCIS P. BRASSOR,

(SEAL) Secretary.

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UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

209 SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

Public Utility Holding Company Act of 1935,
Section 11(b)(1)

MOTION FOR LEAVE TO AMEND ANSWER

The North American Company, a respondent herein,
210 hereby moves for leave to amend its answer herein by adding thereto the following paragraph:

> "18. The programs set forth in Part III of this Answer are proposed only upon the hypothesis of voluntary action by the respondent and shall not be construed as restricting the issues otherwise arising in this proceeding."

SULLIVAN & CROMWELL,
Attorneys for Respondent,
The North American Company.

August 5, 1940.

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 13th day of August, A. D., 1940.

IN THE MATTER 212

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

Public Utility Holding Company Act of 1935, Section 11(b)(1)

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ORDER PERMITTING AMENDMENT OF ANSWER

The North American Company, one of the Respondents in the above entitled matter, having moved for leave to amend its answer herein by adding thereto the following paragraph:

"18. The programs set forth in Part III of this Answer are proposed only upon the hypothesis of voluntary action by the respondent and shall not be construed as restricting the issues otherwise arising in this proceeding."

The Commission having duly considered said motion and finding the same proper to be granted in accordance with the leave to amend said answer extended to said Respondent by the Commission in the course of the oral argument herein on July 15, 1940;

IT IS ORDERED that said motion be, and the same is hereby granted, and said answer be, and it is hereby deemed amended by the addition thereto of that paragraph hereinabove set forth.

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By the Commission.

ORVAL L. DuBOIS,
Recording Secretary.

(SEAL)

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SECURITIES AND EXCHANGE COMMISSION

PHILADELPHIA

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

218

SUBSIDIARY COMPANIES

Respondents

File No. 59-10

Public Utility Holding Company Act of 1935—
Section 11(b)(1)

FINDINGS AND OPINION OF THE COMMISSION

INTEGRATION OF HOLDING COMPANY SYSTEMS 219

Selection of Principal System

Where registered public utility holding companies which are respondents in proceedings under Section 11(b)(1) failed to indicate a choice of the principal systems they desire to retain, *held* Commission will base opinion upon a single integrated public utility system under the control of each such company as its principal retainable system and give such companies further opportunity to make appropriate argument as to the choice of any other single or principal system.

220 *Findings and Opinion of the Commission*

Where holding company failed to indicate a choice of a principal system and where a full record is presented to the Commission upon which final and definitive action may be taken, *held* that request for orders in the alternative indicating what additional systems and what other businesses may be retained in addition to various integrated utility systems controlled by such holding company is denied, particularly in view of number of systems and complexities which would be involved in making alternative findings.

221 *Additional Systems*

Geographical Limitations of Section 11(b)(1)(B)

Where registered holding company claims it may keep additional systems located anywhere in United States as long as each of States in which systems are located adjoins some other State in which systems controlled by the registered holding company are located, *held* the claim is invalid and that Section 11(b)(1)(B) bars retention of additional systems located elsewhere than in State in which principal system operates, or in States adjoining such a State, or in a
222 foreign country contiguous thereto.

Where two States are separated by a lake and have no common boundaries on land, but have such boundaries in the lake, *held* such States adjoin.

Additional Systems

Substantial Economies under Section 11(b)(1)(A)

Where claim is made that standard of Section 11(b)(1)(A) may be met in respect of additional systems if it is shown that economies merely more than nominal would be lost by severance of such systems from the holding company rela-

tionship, *held* the term "substantial economies" in Section 11(b)(1)(A) connotes "important" economies, and the degree of importance must be measured against the general policy of limiting a holding company to control of a single integrated utility system.

Additional Systems

Localized Management, Efficiency, Effectiveness of Regulation under Section 11(b)(1)(C)

Where registered holding company controls utility sys- 224
tems surrounding large cities in different widely scattered sections of the country, *held* the standard of localized management in Section 11(b)(1)(C) would not be satisfied by retention of such systems in combination.

Where a registered public utility holding company engaged in the natural gas production, transmission and wholesale business, controls a retail natural gas system which receives most of its gas from non-affiliated sources and it cannot be found that retention of such retail system would satisfy clauses (A) and (C) of Section 11(b)(1), *held* that it must be disposed of. 225

Combination of Gas and Electric Properties as Single Integrated System

Where claim is made that integrated gas and electric utility systems may be considered as constituting a single integrated public utility system, *held* gas and electric utility properties cannot, in combination, be regarded as a single integrated utility system under the Act.

Where Commission desires additional evidence to aid in determination as to whether the joint control of gas and

electric systems would satify clauses (A) and (C) of Section 11(b)(1), *held* the record will be reopened for the presentation of further evidence pertinent to that issue.

Other Businesses Retainable

Where registered public utility holding company holds securities of public utility companies which are subsidiaries within the meaning of the Act, *held* retention of such securities is permissible only if the subsidiary serves as the
227 principal, or a permissible additional system under clauses (A), (B), and (C) of Section 11(b)(1), and that such retention is not covered by the "other business" clauses.

Where registered public utility holding company holds interests in non-utility enterprises, *held* that the retention of such interests will not be held to be in the public interest unless it is shown that the public will benefit by the holding company's retention of the non-utility interest by reason of the relation of such non-utility business to economy of management and operation and the integration and coordination of related operating properties.

228 Where a registered public utility holding company held interests in a company engaged in the transportation business, and such registered public utility holding company was authorized to acquire such interests, by a Joint Resolution of Congress adopted prior to passage of the Act, *held* such Joint Resolution does not bar the Commission from ordering divestment of such interests if the standards of Section 11(b)(1) are not met.

Where claim was made that an investment in a non-utility business offers diversity to the operations of a holding company system and such interest should therefore be retained, *held* that the mere fact that an investment offers diversity

affords no justification under Section 11(b)(1) for its retention by a public utility holding company.

Where in 35 years of a coal company's existence it has not been found feasible to use the output from such company's mines in the permissible utility operations of a holding company system, *held* an interest in such company represents merely an investment in a business which bears no relation to the system's permissible utility operations, and such interest must be disposed of.

Where close operating relationship between the steam and the electric departments of a utility company is shown, 230
held the steam business may be retained under the "other business" clauses of Section 11(b)(1).

Where almost entire output of a coal company controlled within the holding company system is devoted to the permissible utility operations of such system, and where other facts show intimate relationship between coal company and retainable utility operations, *held* such coal company may be retained under the "other business" clauses of Section 11(b)(1).

Where 11-mile railroad having a relatively small amount 231
of property transports as its principal cargo a large portion of the coal consumed in permissible utility operations of a holding company system and where the mine from which such coal comes has been found to be retainable, *held* the railroad may be retained under the "other business" clauses of Section 11(b)(1).

Where a registered public utility holding company owns directly facilities used in the production and transmission of natural gas and holds the securities of gas utility companies, *held* the retention of such directly-owned production and transmission facilities satisfies the "other business"

clauses of Section 11(b)(1) with respect to a principal natural gas utility system which receives its gas supply from such registered public utility holding company and is closely related to the production and transmisison facilities.

Where, in support of the contention that certain non-utility interests may be retained under Section 11(b)(1), it is claimed that difficulty would be presented in attempting to dispose of such interests, *held* difficulty of disposition has no relation to permissibility of retention under Section
233 11(b)(1), but is relevant only to the time of compliance with orders of disposition.

Integrated Electric Utility System

Where a public utility company operates in areas having utility assets not physically interconnected with those in other service areas of such company except that such assets are physically interconnected with the facilities of non-affiliated companies whose facilities are in turn connected with the main service areas of such company, and it is not shown that the facilities in such isolated areas are physically oper-
234 ated in connection with the facilities in the main service areas as a single interconnected and coordinated system, *held* the electric utility facilities in both isolated and main areas cannot be regarded together as a single integrated public utility system.

APPEARANCES:

Ralph C. Binford, Herman Odell, and *Ester M. Calkin,* for the Public Utilities Division of the Commission.

Sullivan & Cromwell, New York, New York, *S. Pearce Browning, Jr.,* and *Charles S. Hamilton, Jr.,* of counsel for

The North American Company and its subsidiaries, other than North American Light & Power Company and its subsidiaries.

Schenker & Schenker, New York, New York, by *David Schenker,* for North American Light & Power Company and its subsidiary companies.

This proceeding under Section 11(b)(1) of the Public Utility Holding Company Act of 1935 was instituted by a 236
notice of and order for hearing issued by the Commission on March 8, 1940, and duly served, naming as respondents The North American Company (hereinafter sometimes referred to as "North American") and its subsidiary companies.[1] This order, which was based upon an examination by the Commission of the holding company systems of North American and its subsidiaries, set forth various factual allegations and stated further that it appeared to the Commission that:

> "The holding company system of The North American 237
> Company is not confined in its operations to those of a single integrated public utility system within the meaning of the Act, and to such other businesses as are reasonably incidental, economically necessary or appropriate to the operations of such integrated public utility system."

The respondents were ordered to answer, "admitting, denying, or otherwise explaining their respective positions" as to the allegations made. The order further provided:

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[1]Appendix A sets forth the names of these subsidiaries, the states of their organization and the nature of their business.

"Any such answer may include a statement of the claim of the respondents or any of them as to (a) the action, if any, which is necessary and should be required to be taken by any of the respondents (including the divestment of control, securities or other assets), to limit the operations of each of the registered holding companies hereinbefore named to a single integrated public-utility system and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (b) the extent to which any of said respondents which
239 is a registered holding company should be permitted to control one or more additional integrated public-utility systems as may meet the requirements of Clauses (A), (B) and (C) of Section 11(b)(1) of the Act; and (c) the extent to which any of said respondents should be permitted to retain an interest in any business (other than the business of a public-utility company as such) as provided by Section 11(b)(1) of the Act. The answer of any respondent which is a registered holding company may, if such respondent so desires, state that such respondent proposes and is prepared to take such action as will cause it to cease to be a holding company within the meaning of the Act, together with a description of
240 such action and the time within which it proposes to take such action."

North American filed its answer on May 16, 1940. With minor exceptions, the factual allegations of the order of March 8 were admitted. However, it was claimed that the Act was so "vague and uncertain" that the respondent had no knowledge or information sufficient to form a belief as to what constitutes a single integrated public utility system and such other businesses as may be retained thereunder. Section 11(b)(1), and other sections of the Act implemen-

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tary thereto, were alleged to be unconstitutional.[2] The answer also set forth a program of proposed action modifying the system in some respects. The proposed program contemplated, *inter alia*, the retention by North American of Union Electric Company of Missouri, one of North American's principal subsidiaries, and use of the proceeds of liquidation of other holdings for the acquisition of properties which could be integrated with the properties of Union Electric. It was stated that this program was based "only upon the hypothesis of voluntary action by the respondent and shall not be construed as restricting the issues otherwise arising in this proceeding."

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The admitted subsidiaries of North American also filed answers, almost identical in form, admitting, with minor exceptions, the factual allegations in our order of March 8, and raising issues similar to those raised in North American's answer.

On June 7, 1940, North American moved to have the proceedings held in abeyance pending voluntary fulfillment of the program set forth in its answer, and until the Commission made investigations, studies, and public recommen-

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[2]We have repeatedly expressed the view that we have no authority to pass on the constitutionality of the legislation which we administer; we must proceed upon the assumption that the Act is constitutional unless and until a court in an appropriate proceeding declares otherwise. *Engineers Public Service Company*, 9 S. E. C. —— (1941), Holding Company Act Release No. 2897; *International Utilities Corporation*, 10 S. E. C. —— (1941), Holding Company Act Release No. 3047. See also *Panitz* v. *District of Columbia*, 112 F. (2d) 39 (App. D. C. 1940); *Walston & Co.*, 5 S. E. C. 112, 113 (1939); *J. A. Sisto & Co.*, 7 S. E. 647, 653 (1940). Counsel appear to recognize this principle and we assume that the question of constitutionality has been raised here only for the purpose of preserving it in the event of any possible judicial review.

dations under Section 30 of the Act. On June 18 North American moved for a dismissal of the proceedings, basing its motion on the argument that the Commission is without power to issue an order instituting a proceeding under Section 11(b)(1) of the Act until it has made investigations, studies, and public recommendations under Section 30 of the Act, and further alleging that the notice and order instituting these proceedings before studies and recommendations were made under that section would deprive respondents of "property without due process of law in violation of the Fifth Amendment to the Constitution of the United States."

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Both motions were denied.[3]

Upon denial of the application of The Detroit Edison Company under Section 2(a)(8) of the Act for an order

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[3]Somewhat similar motions were filed at about this same time in various proceedings under Section 11(b)(1) involving other systems. In disposing of such motions, we directed that the notices served in such cases be supplemented by a more detailed statement of the Commission's tentative conclusions with respect to the action which "the Commission has tentatively concluded to be necessary under the provisions of Section 11(b)(1)." *See, e.g., The United Gas Improvement Company, et al.*, 7 S. E. C. 341 (1940); *The Commonwealth & Southern Corporation, et al.*, 7 S. E. C. 369 (1940); *Engineers Public Service Company, et al.*, 7 S. E. C. 371 (1940). However, it appears that in this case the respondents did not desire any such supplemental statement of the Commission's tentative conclusions as to what action the Commission tentatively believed necessary for the North American system under Section 11(b)(1). Rather, it appears that respondents' motion was based on the theory that the Commission is required to make a general survey and general recommendations with respect to the entire public utility industry before instituting any specific proceeding under Section 11(b)(1). Our views on the issues thus raised under Section 30 of the Act are set forth at length in an opinion to be issued shortly in the proceeding under Section 11(b)(1) with respect to The Commonwealth & Southern Corporation, et al.

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declaring it not to be a subsidiary of North American,[4] we issued, on August 12, 1940, a supplementary notice and order naming that company and its subsidiaries as respondents. The Detroit Edison Company answered both the original and supplementary orders.

Pacific Gas and Electric Company, whose application for an order declaring it not to be a subsidiary of North American was then pending, filed a separate and supplemental answer to the order of March 8. The application for a declaration that it is not a subsidiary of North American was denied on September 11, 1941.[5]

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On April 9, 1941, counsel for North American moved that the proceeding be dismissed as to certain subsidiaries on the ground that they had been dissolved, or that North American no longer had any interest in them. No objection has been made to this motion, and we think it may properly be, and it is hereby, granted.[6]

Requests for leave to intervene filed by the Public Service Commission of the State of Wisconsin and the Public Utilities Commission of the District of Columbia, the States of Delaware and Maine were granted. After the hearings herein

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[4]*The Detroit Edison Company*, 7 S. E. C. 968 (1940). A petition for review of our order was denied in *The Detroit Edison Company* v. *Securities and Exchange Commission*, 119 F. (2d) 730 (C. C. A. 6th, 1941). Certiorari was denied in 62 S. Ct. 105 (1941).

[5]*Pacific Gas and Electric Company*, 9 S. E. C. ——, Holding Company Act Release No. 2988. A petition for review of our order is pending in the Circuit Court of Appeals for the Ninth Circuit.

[6]The companies as to which this motion relates are Washington and Glen Echo Railroad Company, St. Louis and East St. Louis Electric Railway Company, Wired Radio, Inc., Wired Rediffusion Developments, Ltd., St. Charles Electric Light and Power Company, Lakeside Light and Power Company, Wisconsin General Railway Company, Bloomington and Normal Railway, Electric and Heating Company, Decatur Light, Heat and Power Company, Elkhart Electric Light Company, Chicago and Electric Valley Railroad Company.

were terminated, the City of Jacksonville, Illinois, served by Illinois Iowa Power Company, requested and was granted leave to intervene and present additional evidence subject to reply by respondents.

Hearings were begun on June 21, 1940, and terminated on April 15, 1941. In this period the record was developed to present a detailed description of the holding company systems of North American and its subsidiaries. Requested findings and briefs were filed[7] and we heard argument.

251 *The North American Company and Its Subsidiaries*—North American is the top holding company in a system containing 80 companies which operate in New York, Maryland, the District of Columbia, Virginia, Ohio, Michigan, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Minnesota, Texas, Oklahoma, South Dakota, Kentucky, and California. The businesses engaged in by system companies include those of holding companies, electric utilities, gas utilities, natural gas production and transmission, steam and hot water heating, water supply, urban, interurban and railroad transportation, terminal and warehousing, real estate, coal mining, ice manufacturing and distribution, trucking, parking
252 lot and filling station operations, meter servicing, heavy appliance design and manufacture, amusement park operations, investment companies, oil drilling and gasoline extracting.

Electric utility operations are conducted by system companies in the District of Columbia, Maryland, Virginia, Ohio, Michigan, Wisconsin, Illinois, Iowa, Missouri, Kansas,

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[7]North American Light & Power Company (hereinafter sometimes called "Light & Power"), a subsidiary of North American and a registered holding company, filed a separate request for findings and a separate brief, on behalf of itself and its subsidiaries.

and California. Appendix B attached hereto conveys some idea of the magnitude of the system's electric operations alone. Excluding The Detroit Edison Company and Pacific Gas and Electric Company,[8] it shows that approximately 64,700 square miles of territory, with an approximate population of 6,500,000 persons, and an aggregate of 1,700,000 customers, are served. The addition of The Detroit Edison Company increases the total population of the areas served to 2,580,000 persons, yielding a total of 9,080,000.

North American system companies render gas service 254
in the States of Iowa, Missouri, Nebraska, Minnesota, Illinois, Kansas, Wisconsin, Michigan, and California.

The consolidated balance sheet of North American and subsidiaries, attached hereto as Appendix C, states the assets of the system at $957,063,677, as of December 31, 1940. Appendix C also contains a consolidated income statement of North American and its subsidiaries as of the same date.[9]

Through the ownership of securities, directly and indirectly, of the companies in its system, North American controls an empire whose aggregate value is stated at a figure 255
in excess of $2,300,000,000.

A chart of the system, showing the corporate relationships of companies therein and the percentages of voting

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[8]As has been indicated, at the date of the institution of this proceeding, applications were pending under Section 2(a)(8) for orders declaring The Detroit Edison Company and Pacific Gas and Electric Company not to be subsidiaries of North American; consequently, these companies and their subsidiaries were excluded in many of the computations made with respect to the extent of the operations of the North American system.

[9]It should be noted that the policy of North American is to include in its consolidated financial statements only subsidiary companies in which it holds directly or through subsidiaries voting control and 75% or more of the common stock.

power held by North American and its subholding companies, is attached as Appendix D.

Appendix E is a map showing the location of the electric service territories of the system.

Appendix F is a map showing the location of gas operations of the system.

Appendix G is a map showing the distances of various focal points in the areas served from the central offices of North American at 60 Broadway, New York City .

257 It is to this system that we must now apply the standards of Section 11(b)(1). That section provides that it shall be the duty of the Commission, as soon as practicable after January 1, 1938:

> "(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—
>
> "(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;
>
> "(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

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"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the 260
Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

This opinion will deal not only with the holding company system of North American itself, but also with the status under Section 11(b)(1) of each holding company system headed by subsidiaries of North American (except for the holding company system headed by Light & Power) which are themselves registered holding companies. Subsequent to the closing of the record herein and pursuant to proceed- 261
ings under Section 11(b)(2) of the Act, we ordered the dissolution of Light & Power. 10 S. E. C. —— (1941), Holding Company Act Release No. 3233. We assume that Light & Power will be dissolved in accordance with our order and that there will no longer be a holding company system headed by Light & Power. Consequently, any discussion of the requirements of Section 11(b)(1) as they affect the Light & Power system would be academic. However, the dissolution of Light & Power will not *per se* affect the impact of Section 11(b)(1) on the holding company systems headed by subsidiaries of Light & Power which are themselves regis-

tered holding companies. Those subsidiaries are respondents in this proceeding and, accordingly, we must order them and the holding company systems which they head to comply with the requirements of Section 11(b)(1).

The holding company systems to be considered, in turn, are headed by the following registered holding companies (which are listed with appropriate indentations to indicate their relationship to North American and to one another):

I The North American Company

263 II Union Electric Company of Missouri

III Washington Railway and Electric Company

IV Washington and Rockville Railway Company of Montgomery County

(North American Light & Power Company)

V Northern Natural Gas Company

VI Illinois Traction Company

VII Illinois Iowa Power Company

VIII Des Moines Electric Light Company

I. The Holding Company System of The North American Company

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A. *The Principal System*—The initial problem faced in the determination of what "one or more additional integrated public-utility systems" the Commission "shall permit a registered holding company to continue to control" in addition to its operation of "a single integrated public-utility system" is the determination of what the "single" or "principal" system shall be. North American has insisted on its right to choose the principal system, but it has also insisted that the Act "does not require, either expressly or by implication, that the holding company designate which of the

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systems shall be its principal system." Although it has had adequate opportunity, and although it has been requested to do so on several occasions, North American has not yet expressly stated its choice of a principal system, basing its failure to do so on the contention that it should be free to dispose of its non-retainable properties "as circumstances permit" without being "bound in advance to determine which system would be retained." We are requested to issue an alternative order, for which "precedent" is said to be found in the Section 11(b)(1) proceedings relating to Engi-
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neers Public Service Company[10] and Commonwealth & Southern Corporation.[11]

We do not believe an alternative order is necessary, nor do we think that it would be appropriate to a disposition "as soon as practicable" or the issues here raised.

The procedure of alternative findings in the preliminary stages of the *Engineers Public Service Company* and *Commonwealth and Southern Corporation* cases was adopted because, under the particular circumstances there presented, it did not appear that such procedure would produce any substantial complications or result in any material delay.
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But in this case, where there are eight subsidiary holding company systems under North American, the combinations necessary in the making of findings under the (A), (B), (C), and "incidental business" standards, and in the issuance of alternative orders, would lead to extreme complications. Moreover, as distinguished from the fact that the alternative finding procedure adopted in the two cases cited was utilized only in the intermediate stages of those proceedings, this

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[10] 9 S. E. C. —— (1941), Holding Company Act Release No. 2897.

[11] Holding Company Act Release No. 2626 (1941).

case has now reached the stage where hearings have been completed and where our findings and order can be based on a record presented to us as full and complete. Frequent calls have been made upon North American during the course of the proceeding from service of our original order of March 8, 1940, through the hearings and at oral argument, but it has refused to express any choice of a principal system. There has been little point to the labor of considering what purports to be a complete record if we are now merely to await the pleasure of North American before disposing of
269 the issues. Nor can we disregard the fact that the statute makes it the "duty" of the Commission to require compliance with Section 11(b) "as soon as practicable after January 1, 1938."

Accordingly, in our opinion and order we have taken the integrated electric system operated by Union Electric Company of Missouri and its subsidiaries (the Union group) as the "principal system" retainable by North American. Our reasons for basing our opinion and order on retention of the Union group as the "principal system" are (1) the indi-
270 cation by North American that it would prefer that choice, (2) we would regard the retention as appropriate if called upon to pass upon the choice of this system by North American.

(1) North American has, on several occasions, indicated that, if required to choose a principal system, it would choose the Union group. In the tentative program set forth in its answer, it contemplated retention of its "major investment" in the Union group, and use of the proceeds of liquidation of other holdings for the acquisition of properties which could be "integrated" with the Union group system. Its counsel, in oral argument, stated, as an "educated guess," that North American would choose to retain the Union group

as the principal system if it were required to make an election.

(2) We would regard as appropriate the choice of the Union electric utility system as North American's principal system. As of July 31, 1940, Union Electric Company of Missouri had the following capitalization:

First Mortgage and Collateral Trust Bonds, 3¾%, due 1962	$80,000,000
3% Notes, due 1942	15,000,000
Advances on open account from subsidiaries.	6,800,000
$5 Cumulative Preferred Stock, no par	13,000,000
Common Stock, no par	52,500,000
Surplus	10,200,000

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North American calculates its equity in the assets of the Union system (including surplus) at 33.4% of the total capitalization. It holds all of the common stock, representing 25.81% of the total capitalization. This stock was carried on its books, at December 31, 1940, at $51,840,780. Union Electric Company of Missouri in turn has the following interests in the total capitalization, including surplus, of its principal operating subsidiaries:

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Union Electric Company of Illinois	100%
Cupples Station, Light, Heat and Power Co.	100%
Mississippi River Power Company	44.53%
Iowa Union Electric Company	63.29%

Dividends received by North American from Union of Missouri for 1940 amounted to approximately $5,737,500, the largest amount paid up, in that year, by any of its subsidiaries. North American's investment in the Union system began in 1901. There have thus been 40 years of investment contact with the Union properties.

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Union of Missouri, together with the above-named subsidiaries, operates an electric utility system in the States of Missouri, Illinois, and Iowa. These operations are carried on in an area centering around St. Louis in the eastern part of Missouri, in adjoining territory in Illinois surrounding the City of East St. Louis, in an area surrounding a large hydroelectric plant at Keokuk, Iowa, and in and around a hydro plant at Osage, Missouri.

The total area served by the group contains 3,100 square miles and a population of 1,500,000. As of May 31, 1940, the
275 group served a total of 351,565 customers with electricity and, in the year ending on that date, produced a total of 2,579,520,155 kwh of current. Of a total name plate production capacity rating of 722,500 kw, 237,000 kw are hydro and 485,500 kw are steam.

All production facilities for electric operations of the group are at present physically interconnected and centrally controlled, and are coordinated without reference to differences in corporate ownership. Transmission line connections between generating stations make it possible to operate the system as an entity—coordinating, as economy and neces-
276 sity require, the hydro and steam production units. The group owns transmission, sub-transmission, and distribution lines and sub-stations for the carrying of its produced current.

The operations in Missouri are subject to regulation by the Missouri Public Service Commission, and in Illinois by the Illinois Commerce Commission. Iowa Union Electric Company, which operates in Iowa, is subject to municipal rate regulation.

We find that these electric operations of the Union group constitute those of a single integrated electric utility system

within the meaning of the Act, and that the retention thereof as the principal system of North American satisfies the terms of Section 11(b)(1).

Although, for the reasons indicated, we have based our opinion and order on retention of the electric utility operations of the Union group as North American's principal system, we have decided to afford North American a further opportunity to present argument as to whether it desires any system other than the electric utility operations of the Union group as its principal system. Accordingly, we shall entertain a request for further argument in this respect and 278
our order, insofar as it requires divestment by North American, will be subject to modification if, after presentation of further argument, such modification appears necessary.

B. *The Additional Systems Retainable by North American*—Excluding subsidiaries of Light & Power, North American subsidiaries operate electric, gas, and other facilities in five distinct areas in addition to the St. Louis area of the Union group. These are the Washington area (including the District of Columbia and adjacent Maryland and Virginia territory) in which subsidiaries of Washington Railway and 279
Electric Company operate; the Cleveland area (including that city and surrounding territory in northeast Ohio) in which Cleveland Electric Illuminating Company, a direct subsidiary of North American, operates; the Detroit area (including a large area surrounding that city in southeast Michigan) in which The Detroit Edison Company operates; the Wisconsin-Michigan region (including three areas, two centering respectively around Milwaukee in southeast Wisconsin and Appleton in east central Wisconsin, and one embracing a large part of the northern peninsula of Michigan

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and running south into Wisconsin) in which the Wisconsin Electric Power, Wisconsin Gas and Electric, and Wisconsin-Michigan companies (all direct subsidiaries of North American)[12] operate; and the California area, in which Pacific Gas and Electric Company operates.

Counsel for the Public Utilities Division has conceded, and we find, that the electric operations in each of the Washington, Cleveland, Wisconsin-Michigan, and Detroit areas constitute those of a single integrated public utility system within the meaning of the Act.

281 It is of course clear that Section 11(b)(1) requires that a registered holding company divest itself of those of its utility subsidiaries which are not retainable as part of the holding company's principal system or as part of an additional system or systems meeting the requirements of the (A), (B), and (C) clauses of Section 11(b)(1). *The United Gas Improvement Company and Its Subsidiary Companies*, 9 S. E. C. —— (1941), Holding Company Act Release No. 2692, p. 11. It is clear, too, that the standards of the (A), (B), and (C) clauses for additional systems are in the conjunctive and that each must be satisfied to permit retention

282 of additional systems.

North American claims that under the (A), (B), and (C) standards, it may retain the Union, Wisconsin-Michigan, and Cleveland systems. It has made no claim that these standards would permit the retention of any of the other systems operated by its subsidiaries.

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[12]Since the closing of this record, we have approved transactions whereby North American has transferred its holding in the Wisconsin Gas and Electric Company and Wisconsin-Michigan Power Company to Wisconsin Electric Power Company, 9 S. E. C. —— (1941), Holding Company Act Release No. 2950.

For the reasons set forth below, we do not believe that the standards of the (A), (B), and (C) clauses of Section 11(b)(1) permit the retention of any of these systems as "additional systems" to the Union group. We think that North American's claim is based on a misconstruction of the geographical limitations of clause (B), of the meaning of the phrase "substantial economies" in clause (A), and of the limitations of clause (C).

1. *The Geographical Limitations of Section 11(b)(1)(B)* —The meaning of clause (B) was the subject of extended consideration in the *Engineers Public Service Company*[13] case. 284
We there concluded that under clause (B) (even assuming compliance with clauses (A) and (C)) additional systems could be retained only if they are:

> "located in a State in which such single system [*i.e.*, the 'principal' system] operates, or in States adjoining such a State, or in a foreign country contiguous thereto."

The electric operations of the Union group, which we have taken as the principal system, are carried on in Missouri, Illinois, and Iowa. Clause (B), therefore, clearly bars 285
the retention of the Cleveland, Washington, and California utility operations as additional systems. Whether the integrated electric utility system of the Wisconsin-Michigan companies can be retained under clause (B) as a system additional to the Union system depends on whether the former system is "located . . . in States adjoining" a State in which the Union group operates. Of course, Wisconsin and Illinois have common boundaries; but most maps leave ambiguous the status of Michigan and Illinois as "adjoining." The latter

[13] 9 S. E. C. —— (1941), Holding Company Act Release No. 2897.

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two states are, apparently, completely separated by Wisconsin, Indiana, and Lake Michigan. They "adjoin" only if their boundaries in fact meet in Lake Michigan. We have concluded that Illinois and Michigan may properly be regarded as "adjoining" by reason of common boundary lines.

"Illinois was admitted as a State with its present boundaries by resolution approved December 3, 1818 (3 Stat. L. 536). The enabling act defines these boundaries as follows: (3 Stat. L. 429)

287 "The said State shall consist of all the territory included within the following boundaries, to wit: Beginning at the mouth of the Wabash river; thence up the same and with the line of Indiana, to the northwest corner of said state; thence, east with the line of the same state, to the middle of Lake Michigan; thence north along the *middle of said lake* to the north latitude forty-two degrees thirty minutes; thence west to the middle of the Mississippi river; and thence down along the middle of that river to its confluence with the Ohio River; and thence up the latter river along its northwestern shore to the beginning."[14] (Emphasis supplied.)

* * *

288 "Michigan was admitted to the Union on January 26, 1837 (5 Stat. L. 144) with the proviso and boundaries given in the enabling act as follows: (5 Stat. L. 49)

" . . . thence (from the main channel of the Menomonie River) . . . to the center of the most usual ship channel of the Green bay of Lake Michigan; thence through the center of the most usual ship channel of the said bay to the *middle of Lake Michigan;* thence through the *middle of Lake Michigan*, to the northern boundary of the State of Indiana, as that line was established by

[14]United States Department of the Interior, Geological Survey Bulletin 817, "Boundaries, Areas, Geographic Centers, and Altitudes of the United States and the Several States" (2nd Ed.), p. 193.

the act of Congress of the nineteenth of April, eighteen hundred and sixteen; thence due east, with the north boundary line of the said State of Indiana, to the north-east corner thereof; and thence, south, with the east boundary line of Indiana to the place of beginning."[15] (Emphasis supplied.)

Since we find that Michigan and Wisconsin adjoin Illinois, a State in which the Union group operates, we hold that the retention of the Wisconsin-Michigan system would not be barred by clause (B).[16]

290 North American's counsel has attempted to justify the retention of the Cleveland properties on the ground that:

"Wisconsin adjoins Illinois—we have properties in Wisconsin; Michigan adjoins Wisconsin—we have properties in Michigan, in the northern peninsula there; and we have properties in Ohio which adjoin [*sic*] Michigan." (Oral Argument, p. 58).

This might be characterized as the "chain" theory of clause (B). Carried to its logical conclusion, it would permit the retention of properties from one coast of the country to the other, as long as the holding company retains property in each State of the chain of States. 291 We think that the invalidity of this contention is too apparent to require further comment here. See our discussion of clause (B) in the *Engineers Public Service Company* case (*supra*).

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[15] *Id.*, p. 197.

[16] By the same reasoning, clause (B) would not bar retention of the Detroit Edison system as an additional system. However, North American has not claimed that such retention is permissible under the standards of clauses (A), (B), and (C), and has not attempted to prove compliance with the standards of clauses (A) and (C), but has argued that its "investment" in that company may be retained on other grounds. This problem will be dealt with later in this opinion.

We conclude, therefore, that, based on the electric utility operations of the Union group as North American's principal system, clause (B) bars retention of the systems of the Cleveland, Washington, and California companies. It does not bar retention of the integrated systems of the Wisconsin-Michigan group or of The Detroit Edison Company.[17]

Nevertheless, we have concluded that retention of the Wisconsin-Michigan or Detroit properties as additional systems to that of the Union group is not permissible under the standards of clauses (A) and (C).

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2. *The Standard of "Substantial Economies" in Section 11(b)(1)(A)*—We cannot permit the retention of "additional systems" by a registered holding company unless we find that the standards of clauses (B) and (C) have been satisfied and that, in accordance with clause (A):

> "Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system."

294 The phrase "substantial economies" in clause (A) refers to economies which may be secured by the systems themselves rather than to economies which may be secured by the holding company. This was the clear intent of Congress (see H. R. Rep. No. 1903, 74th Cong., 1st Sess. (1935), p. 71) and, in fact, argument by all counsel in this case has been premised on this view.

Counsel for North American has, however, attempted to minimize the requirement of "substantial economies" and

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[17] The question of the retention of integrated systems or properties of subsidiaries of Light & Power as additional to the Union system is referred to in note 19, *infra*.

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to argue that the phrase means only something more than "purely nominal" or "*de minimis*" economies. In support of this proposition, counsel has cited cases involving will contests, taxation, evidence, and exemption from the Act under Section 3(a)(1).

We think that the cases which have been cited are of little aid in the interpretation of the phrase "substantial economies" and that the phrase must, rather, be construed in the light of its context and the policy of the Act. The normal and usual meaning of the word "substantial" is a meaning connoting "important". And we think that this normal and usual meaning is compelled here. The degree of importance must be measured against the vital policy to which clause (A) is an exception, *i.e.*, the policy of limiting holding companies to the operation of a single integrated public utility system.

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Some light on the background against which this clause was drafted may be found in certain remarks made by Senator Wheeler in interpreting the action taken by the Conference Committee on the legislation.

> "After considerable discussion the Senate conferees concluded that the furthest concession they could make would be to permit the Commission to allow a holding company to control more than one integrated system if the additional systems were in the same region as the principal system *and were so small that they were incapable of independent economical operation . . .*"[18]

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These remarks reinforce the conclusion that clause (A) was intended as a significant standard to be applied only where there was a strong reason for an exception to the general policy of permitting retention of only one integrated

[18]79 Cong. Rec. 14479. (Emphasis supplied.)

system. They are certainly not consistent with the suggestion of counsel for North American which, in effect, urges us to disregard the word "substantial." We conclude, therefore, that to warrant an exception to the limitation of a holding company system to a single integrated public utility system and to satisfy the standard of clause (A), respondent must show that important economies will be lost if the holding company's control of such system is severed.

On the basis of the record before us, we cannot find that
299 "substantial economies" would be lost by the separation from the holding company relationship of any of the electric utility systems now operated by subsidiaries of North American.[19]

Cogent support for this conclusion is found in North American's stated policy. It has, according to its counsel, operated for more than 20 years on the theory that "each operating group should have a strong localized management, which was aided by the advice and counsel of the holding company, to avoid the dangers of local stagnation."

As nearly as can be determined from the record in this
300 case, North American leaves operations and operational pol-

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[19]The retention of gas systems under the standards of clauses (A) and (C) is discussed *infra*, p. 23.

The utility properties of subsidiaries of Light & Power are, of course, part of the North American system. North American has presented no evidence or argument directed to the question whether any of these utility properties can be retained under the Act along with the Union system and since we cannot, on the basis of the record, find that such properties may be retained by North American as part of its principal system or as an additional system or systems meeting the (A), (B), (C) standards, we must order their divestment. However, our order requiring North American to divest itself of its interest in Light & Power and Light & Power's subsidiaries does not foreclose the filing of applications in the future looking to the possible integration of any of these properties with the retainable properties of North American.

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icy to the managements of its subsidiaries. It certainly can not claim that, insofar as the day-to-day operation of a public utility business is concerned, independence of the companies in its system will cause the loss of substantial economies.

North American rests its arguments under clause (A) on other grounds. The bases for its contentions in this respect are alleged to be (a) its assistance to subsidiaries in their financing, (b) its advisory and consultative facilities, and (c) the benefits from its intercompany committees.

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(a) *Assistance in financing*—North American's participation in and domination over financing matters of its subsidiaries has, in the past, constituted North American's most important activity in its subsidiaries' affairs. Operating heads of its subsidiaries have testified to the completeness with which North American takes over the planning and handling of securities flotations. One by one they have disclaimed the ability to build, within their own groups, talent to meet their local financial problems. They have claimed that such talent would be expensive and that it would be wasted because of the infrequency of its exercise, if limited to individual groups.

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While we cannot accept the premise that the problems of financing independent public utility companies are too complicated and difficult for the average local management of average business capability, we are willing to make that assumption *arguendo* in testing North American's claim that it would be uneconomical for any of the sub-holding company systems to employ officers and a staff capable of handling financial problems.

In assessing this claim, the statements of North American counsel in argument before us are pertinent:

"North American's subsidiaries illustrate the tremendous growth problem and need for capital. Thus, the Wisconsin Group which had outstanding $15,764,000 in securities in 1900, rose to $55,670,000 in 1920 and more than $156,000,000 by 1940. The St. Louis Group, with a capitalization of $8,200,000 in 1904, rose to $40,878,000 in 1920 and $193,605,000 in 1940. Cleveland, when control was acquired by North American in 1922, had a total plant account of $41,200,000 which increased to $128,000,000 by 1930 and $148,200,000 in 1940."

305 The Cleveland Electric Illuminating Company has, to date, issued 34 issues of debt securities, 13 issues of preferred stock, and 29 issues of common stock. The nature and amounts of the securities of the three Wisconsin-Michigan companies have fluctuated greatly year by year. The testimony on behalf of the Union group indicates that its financing problems are also of "considerable magnitude." North American has been forced to concede the magnitude of Union's financing. It would seem, in view of the contention that where there is little financing it is not economical to maintain a financial staff, that Union should have such a
306 staff because of its volume of financing. But here it is argued, somewhat inconsistently with the argument in respect of the other groups, that the maintenance of a local financing staff for the Union group would involve considerable expense and would not, for that reason, be advisable.

We think that North American's argument is, in fact, self-defeating. The normal development of a management faced with financing problems recurring as often as they do in the utility industry would appear to be toward familiarity with the problems involved. If we accept the testimony before us, it may well be the fact that North American's

usurpation of the handling of its subsidiaries' financing problems has retarded that development in the managements of its subsidiaries.[20] But we are by no means convinced that it would be uneconomical for the subsidiary systems to maintain a personnel equipped to deal with their own local financial problems. And if it be the fact that the present managements of the system companies are incapable of holding their own in financial negotiations, independence will permit stockholders in those companies to substitute capable management.

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Although sufficient motives for active intervention in financing by North American, other than a desire to aid and assist its subsidiaries, may exist,[21] we are not concerned with them here. We hold that it has nowhere been shown that such financing could not have been done, and done without the loss of substantial economies, without North American's participation.[22]

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[20]The president of Potomac Electric Power Company, principal operating subsidiary of Washington Railway and Electric Company, was forced, by reason of his denial of knowledge of financial matters, to admit that he was not competent to judge the success of his company in securities flotations effected with the aid of North American 309 as compared with companies outside the system.

[21]The importance and value to a holding company of being able to dominate its subsidiaries' financing and to control the flow, through underwriting channels, of millions of dollars of securities are too obvious to need discussion.

[22]A questionable exception is the evidence bearing on the insistence of Edwin Gruhl in 1932 (while he was president of North American) that bonds to finance the Wisconsin-Michigan properties be issued to the extent of $5,000,000 over the amount then needed. It was stated that the money was used to advantage in building a generating plant at low cost during the depression and that Gruhl's action was based on "great vision."

Refundings at lower interest rates within the past few years, cited as evidence of North American's aid, have certainly not been peculiar to the North American system. It is common knowledge that public utilities, as well as industry as a whole, have been enabled to scale down interest by advantageous refundings.

The further argument has been made that severance of North American's control would deprive the subsidiary systems of an important source of financing. In support of this argument, North American's counsel has cited the testimony of a vice president of Wisconsin Electric Power Company to the effect that:

> ". . . the North American Company, over the years, has been our financial backer and as a result we have been freer to devote our major attention to other phases of the business."

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Advances by North American to its subsidiaries are cited to reinforce the argument.

Consideration of the record in this respect leaves us in no doubt, however, that severance of the subsidiary systems from North American would not deprive them of any "substantial economies" respecting the borrowing of money. In support of the above-quoted testimony the witness cited advances by North American to Wisconsin Electric Power Company in 1920 carrying interest at 6½%. There have been no advances from North American to its subsidiaries
312 since 1935. In fact, there were substantial periods when North American borrowed from its subsidiaries for the purpose of lending money in the call-money market.[23] Thus, Union Electric Company of Missouri at one time had balances as high as $9,258,000 outstanding against North American, and in 1932, Wisconsin Electric Power Company had a balance due from North American in the amount of $3,429,000.[24] Moreover, whereas interest rates paid by subsidiaries to North American for sums borrowed during the

[23]This practice was justified as "assistance" to subsidiaries "in earning some return on that money."

[24]In 1929 this balance was $8,510,000.

period from 1915 to 1930 varied from 4½% to 8⅛%, North American paid interest to its subsidiaries at a rate generally lower than current call-money rates. We certainly cannot find that the cessation of this credit interflow would result in the loss of "substantial economies" to the subsidiary companies.

(b) *Advisory and consultative facilities*—The operating heads of various North American subsidiaries have acknowledged indebtedness to North American for the advice and consultation afforded by its staff on management problems. 314
It does appear that there has been some interchange of ideas with respect to budgeting, tax matters, major installations, and accounting matters. However, it should be noted that North American's entire operating division consists of eight persons, including three clerks, two engineers, a rate specialist, and two executives who are not engineers.

There is nothing in the record to indicate that a cessation of this advice and consultation would cause the loss of any substantial economies to subsidiary systems. North American, it is claimed, holds itself open for advice and consultation "to avoid the dangers of local stagnation." This claim 315
may be measured against the view uttered by one of North American's own witnesses:

> "In the electrical industry as a whole, I refer to the utility industry primarily, there is a great freedom of interchange of ideas, facilities and information."

We may assume that the character of the electric utility industry will not change so drastically in the future as to permit companies which have been severed from the North American system to fall into "local stagnation."

(c) *The intercompany committees*—North American subsidiaries (other than Light & Power and its subsidiaries, and Pacific Gas and Electric Company) have representation on three system committees which serve as a clearing house for technical and accounting information. The record indicates that the operation of these committees has been of some benefit to the participating companies. The same witnesses who testified to the value of the committees also testified that the committees could not survive a rupture in the affiliated status of the members. We are unable to under-
317 stand why—if the value of the committees is so patent—the self-interest of the participating companies would not compel their retention. We see no obstacle to the retention of such committees outside the North American system and we think that their dissolution would only be proof of the insubstantiality of the "economies" resulting from them. We cannot find, therefore, that by reason of the intercompany committees substantial economies will be lost by the severance of North American's control of the subsidiary systems.

3. *The Standard of Size in Section 11(b)(1)(C)*—Were
318 North American to satisfy all of the limitations in clauses (A) and (B) with respect to the electric utility systems which it claims it can keep as additional systems to the Union group under the (A), (B), and (C) clauses, retention of these systems would nevertheless not be permissible, for we cannot find that such systems meet the tests posed by clause (C).[25] A holding company cannot retain, in addition to its principal system, any other system which results in a combination of systems—

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[25]As has been stated, no attempt has been made by North American to show that any of the various subsidiary systems of Light & Power might be retained as additional systems to the Union group under the standards of clauses (A) and (C). See footnote 19, *supra*.

". . . so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

The bulk of the service area of the Union group centers around St. Louis, Missouri. Such operations as it conducts in Illinois center around East St. Louis, directly across the Mississippi River from St. Louis. The Wisconsin-Michigan properties spread from the northern boundary of the United States in the Michigan Peninsula to the southeastern part of 320
Wisconsin, where the operations center around Milwaukee. The Detroit Edison Company operates in an area radiating out of Detroit, Michigan. The Cleveland properties serve an area surrounding the City of Cleveland and containing 1,700 square miles with a population of 1,500,000.

Clause (C) enjoins us to consider the "area or region" affected in determining whether the advantages of localized management, efficient operation, or the effectiveness of regulation will be impaired. We have indicated in the *Engineers Public Service Company* case, *supra*, that the singular form of the phrase "area or region" in clause (C) is material 321
in determining what additional systems are permissible under clause (B). The fact that this phrase is in the singular is material, also, in a determination of what is meant by the term "localized management" in clause (C). The language of that clause, taken together with the legislative history exhaustively commented on in the *Engineers* case, makes it apparent that an intention is manifested to prevent retention of additional systems where such retention will result in control by the same interests of unrelated properties in widely separated areas.

322 The language of clause (C) finds an almost identical counterpart in the definition of an integrated electric utility system contained in Section 2(a)(29)(A). That definition describes a system having certain physical characteristics and which is, further—

> ". . . confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

323 Similar language appearing in different sections of a statute is normally to be given the same meaning.[26] The use of this similar language in Section 2(a)(29)(A) and in clause (C) of Section 11(b)(1), in our opinion, casts considerable light on the meaning of the size standards of clause (C) and would seem to indicate that similar considerations are involved in applying the size standards of clause (C) to a combination of principal and additional systems, as are involved in applying the size standards of Section 2(a)(29)(A) to determine the maximum limits of
324 a single integrated system. However, it is not necessary in this case to decide whether the Act compels such a conclusion. Viewed in any light and standing by itself, clause (C) could not be satisfied by a combination of the Union group properties with those of the Wisconsin-Michigan, Detroit Edison, or Cleveland systems.

Milwaukee and St. Louis are 285 miles apart. Detroit and St. Louis are 415 miles apart. Cleveland and St. Louis are 424 miles apart. Each of the systems operating in the

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[26] *United States* v. *Cooper Corporation, et al.*; 312 U. S. 600 (1941).

vicinity of these cities is a vast enterprise.[27] The operations of each center around a large city which dominates the life of the area surrounding it. Each is the focal point of a different "area or region," in a geographical, sociological, and operational sense.

We are not persuaded by North American's argument that the present local character of the management of its subsidiaries shows that a combination of the St. Louis, Wisconsin-Michigan, Detroit Edison, and Cleveland properties would satisfy the standards of clause (C).[28] As assured as we might be of the completeness of this localized management, it cannot be guaranteed that this policy of North American's management will remain unchanged or that the present management of North American will remain forever in power. Light & Power's policy with respect to localization of its subsidiaries' managements changed swiftly 326

[27]The Union group in 1939 sold 2,140,509,187 kwh to 249,096 customers in an area of 3,100 square miles. The consolidated capitalization of the Union group (including surplus) was $203,444,978 at December 31, 1940.

The Wisconsin-Michigan group in 1939 sold 1,194,464,505 kwh to 250,770 customers in an area of 8,289 square miles. At December 31, 1939 the book value of the electric properties alone of these companies was $140,315,612. 327

The property and plant account of The Detroit Edison Company, as of June 30, 1940, was $327,619,644 before deduction of reserves.

The Cleveland system in 1940 sold 1,841,085,543 kwh to 330,000 customers in an area of 1,700 square miles. As of December 31, 1940, the consolidated property and plant account of Cleveland Electric Illuminating Company was $148,223,464 before deduction of depreciation reserves, and $113,641,751 after such deduction.

[28]North American has stated that its unawareness of certain activities of persons connected with the management of the Union group (which activities have resulted in the recent conviction of Union Electric and its chief executive officer for wilful violation of Section 12(h) of the Public Utility Holding Company Act) illustrates the extent of its localization policies. If we accept this statement, it would seem to be persuasive evidence that North American's utility empire has grown too large for efficient management.

when North American assumed active control. So may North American's policy change with a changed management. We must, under the statute, look to size and the area or region affected, not to the policy of a particular management group, in making our determination.

For the reasons stated, we cannot find that a combination of either the Wisconsin-Michigan, the Detroit Edison properties, or the Cleveland system with the Union group would satisfy clause (C).

329 4. *The Retention of Gas Systems*—The contention is urged upon us here, as it was in the *Columbia Gas & Electric Corporation*[29] and *The United Gas Improvement Company*[30] cases, that gas and electric properties may be retained together as parts of a single integrated public utility system. That contention was considered and reconsidered at length in the above-mentioned cases, and rejected. No argument has been presented and no evidence has been adduced herein which would lead us to change our conclusion in this respect. On the authority of, and for the reasons discussed in, the *Columbia Gas* and *United Gas Improvement* cases, we hold that gas properties may be retained by North American only if such gas properties are part of an integrated gas utility system retainable as an "additional system" under the (A), (B), (C) standards of Section 11(b)(1).

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Gas facilities are operated by both Wisconsin Gas and Electric Company and Wisconsin Michigan Power Company in the Wisconsin-Michigan group. Gas operations are also

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[29] 8 S. E. C. —— (1941), Holding Company Act Release No. 2477.

[30] 9 S. E. C. —— (1941), Holding Company Act Release No. 2692.

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conducted by The Detroit Edison Company, Pacific Gas and Electric Company, certain subsidiaries of Light & Power, and the Union group. We have determined that the electric utility systems operated by the Wisconsin-Michigan companies, The Detroit Edison Company, Cleveland Electric Illuminating Company, and Pacific Gas and Electric Company,[31] cannot be retained by North American in combination with the Union group and no attempt has been made to show that any of the electric utility systems operated by any subsidiary of Light & Power can be so retained. Since such relationships as have been shown between gas and electric operations deal with the gas and electric operations of each individual group, rather than with the gas operations of one group and the electric operations of another, there is no evidence which would permit us to find that any gas properties outside the Union group territory can be retained in combination with the Union group.

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The gas operations in the Union group territory are conducted by Union Electric Company of Illinois, a subsidiary of Union Electric Company of Missouri, in Alton, Illinois; by Iowa Union Electric Company, also a subsidiary of Union Electric Company of Missouri, in Keokuk, Iowa; and by St. Louis County Gas Company, a direct subsidiary of North American, in an area surrounding the City of St. Louis. The gas operations of the three companies are located within the electric service territory of the Union group. Although the gas operations of the Iowa and Illinois companies are relatively small, the total assets of the St. Louis County

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[31]Respondents' argument with respect to retention of North American's interest in The Detroit Edison Company and Pacific Gas and Electric Company as "investments" is considered *infra*, p. 28.

Gas Company amounted at May 31, 1940, to the substantial sum of $9,944,909.

We find that the gas operations of the three companies constitute those of three integrated gas utility systems. It is clear that retention of these systems in addition to the electric operations of the Union group would satisfy clause (B). More difficult questions are presented, however, under the standards of clauses (A) and (C). Evidence has been introduced to show the use of joint personnel and facilities and close operating and managerial relationships between
335 the gas and electric operations. It has been stated that the mutual performance of meter-reading, billing, engineering, maintenance and the like, as between Union of Missouri and St. Louis County Gas, alone, results in annual savings of $230,000 per annum. There is no indication of the method by which this figure has been calculated. And, more important, there is nothing in the record from which we can compare the alleged economies resulting from use of joint personnel and facilities with the possible increased economies and efficiency which might result from the independent operation of the gas systems. Such a comparison would seem
336 to be particularly pertinent to the question presented under clause (A)—whether the gas systems cannot be operated independently "without the loss of substantial economies which can be secured by the retention of control" of these systems and the electric operations of the group by the same holding company.

In many branches of consumer use, gas and electricity are natural competitors. Especially when both operations are conducted in the same territory, joint control creates the danger that one business may be suppressed in favor of the other or be made to carry the other. Economies claimed to

result from joint operations must be measured against the possibility that independence will permit unsuppressed development and growth for both types of businesses.

We are not satisfied that this record contains an adequate exploration of the relevant evidence bearing on the question whether retention of these gas systems in addition to the electric operations of Union would satisfy the standards of clauses (A) and (C). We have therefore decided not to make any findings on this matter at this time. We shall direct that the record be reopened for the purpose of receiving further evidence bearing on the permissibility under the Act of retention of the gas operations of the Union group—including those of the St. Louis County Gas Company—in addition to the electric operations of the group. To afford respondents and our staff an opportunity to prepare for the introduction of such evidence, our order setting the date for the further hearing will contain a statement of the specific matters upon which we desire to have additional evidence presented. 338

C. *The "Other Businesses" Retainable by North American*—A registered holding company is required by Section 11(b)(1) to limit its operations to a single integrated public utility system, to such additional public utility systems as meet the standards of clauses (A), (B), and (C), and to "*such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system . . .*" The section provides further that "*The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems* 339

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the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." (Emphasis supplied.)

North American controls directly certain companies engaged in the investment, real estate, and coal businesses. The Union group, in addition to the electric operations which we have determined may be retained by North American as
341 an integrated public utility system, also conducts heating, real estate, coal, and railway businesses. It is claimed that interests in all of these businesses may be retained under the "other business" clauses of Section 11(b)(1). North American has also argued that it may retain its interests in The Detroit Edison Company and Pacific Gas and Electric Company as "investments" under these clauses.

In the course of argument respecting retention of non-utility interests, counsel for the respondents cited the *American Water Works and Electric Company* case, 2 S. E. C. 972
342 (1937), in support of his contention that we are required to make "affirmative findings . . . that North American may retain its minority utility investments and all of the other businesses controlled within the holding company system." We think it is clear that the *American Water Works* case is not authority for the retention of all of the interests for which counsel contends. We think that it is appropriate here to define in broad outline the criteria which we believe must be considered in determining whether we can permit the retention by a public utility holding company of interests in businesses other than the electric and gas utility businesses.

If it be recalled that the Commission may permit retention of an interest in a non-utility business as "reasonably incidental, or economically necessary or appropriate" to the operations of an integrated public utility system or systems, when it finds retention of such interest to be "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning" of such a system or systems; and if it be recalled that the phrase "public interest" is used in connection with the policy of curing evils which result "when the growth 344
and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties" (Section 1(b)(4)), it becomes apparent that the historical background of the joint control of a non-utility business with a utility business has little or no bearing on the permissibility of its retention in a public utility holding company system. Interests held for a long period do not, by reason of that fact alone, achieve any relation to "economy of management and operation" or "the integration and coordination of related operating properties." Indeed, it is the very purpose 345
of Section 11(b)(1), to require the severance of those interests acquired in the course of the historical "growth and extension" of a holding company which do not satisfy the policy of the Act.

By the same token, the "substantiality and stability of income" afforded by non-utility interests is not, in and of itself, a factor warranting their retention in a public utility holding company system. Substantial and stable income might be afforded by businesses having no imaginable relationship to the economy of management and operation of integrated public utility systems. If the "other business" clauses of Section 11(b)(1) are not to be removed from

their statutory context, and if we are to give full weight to the express standards and the policy of the Act, we cannot find that any business is "reasonably incidental, or economically necessary or appropriate" to the operations of an integrated public utility system or is "not detrimental to the proper functioning" of such a system merely because it is profitable.

The same considerations apply to economies resulting from joint use of personnel. Unless the non-utility business
347 is such that resulting economies are *economies in the operation of an integrated utility system or systems,* the mere showing of economies is of little weight in determining whether the non-utility business may be retained.

With respect to many of the non-utility properties involved in this proceeding, the claim has been made—apparently as an argument in favor of permitting retention—that great difficulty would be faced and losses would be sustained in disposing of such properties in compliance with a divestment order. The difficulty of disposing of an interest frequently results from the inability to find interested pur-
348 chasers at a price which is equal to or more than the value at which such interest is carried on the books. Realistically, the sale of such properties does not always mean that a loss has been *sustained* at the time of the sale, but rather that it may have to be recognized at that time. Where it is clear that there is no market at any reasonable price and where disposition by any other method than sale is not feasible, a company which has been ordered to dispose of various interests may, under Section 11(c), request an extension of time for compliance with divestment orders.

With respect to certain non-utility interests, respondents have argued that they need show no affirmative public benefit resulting from the retention of such interests, and they have

argued, further, that we need find merely that retention of such interests is "compatible with the public interest."

To make the statutory finding which it is conceded we must make to permit retention of a non-utility interest requires, in our opinion, more than a showing that no positive harm will result from the retention. What do the phrases "public interest" and "proper functioning" of an integrated system in their context in Section 11(b)(1) mean? It is our view that they refer to the stated policy of the Act to limit the activities of public utility systems to activities related "to economy of management and operation" of the *public utility* system, and the "integration and coordination of related operating properties."[32] Compatibility with that interest, even if that is all that need be shown, requires a showing that the public interest will be furthered by retention of a non-utility interest by reason of its relation "to economy of management and operation" of a public utility system or systems or "the integration and coordination of related operating properties."[33] We cannot make the *affirmative* statutory

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[32]See Section 1(b)(4).

[33]Compare *United States* v. *Lowden*, 308 U. S. 225 (1939), where the Supreme Court was called upon to construe the phrase "public interest" as it appears in Section 5(a)(4) of the Transportation Act of 1920. In reviewing a determination of the Interstate Commerce Commission upon an application for approval of a consolidation of railroad companies, the Court said (308 U. S. at 230): 351

> "In *New York Central Securities Co.* v. *C. C. C. & St. L. Ry. Co.*, 287 U. S. 12, we pointed out that the phrase 'public interest' in this section does not refer generally to matters of public concern apart from the public interest in the maintenance of an adequate rail transportation system; *that it is used in a more restricted sense defined by reference to the purposes of the Transportation Act of 1920, of which the section is a part and which, as had been recognized in earlier opinions of this Court, sought through the exercise of the new authority given to the Commission to secure a more adequate and efficient transportation system.*" (Emphasis added.)

findings necessary to permit retention unless the record contains such a showing.

In the course of this opinion the standards of the "other business" clauses will be applied to many non-utility businesses in the North American system. We have not thought it necessary to repeat the foregoing discussion in connection with each such interest, since our comments here are intended to apply generally.

353 1. *North American's Interests in The Detroit Edison Company and Pacific Gas and Electric Company*—At the time these proceedings were instituted, applications were pending with respect to both The Detroit Edison Company and Pacific Gas and Electric Company for orders under Section 2(a)(8) of the Act declaring such companies not to be subsidiaries of North American. North American has argued that its interests in these companies represent merely "investments" and that their retention should be determined under the "other business" clauses of Section 11(b)(1).

354 However, on August 5, 1940, and September 10, 1941, respectively, we issued our findings and orders denying both of the applications under Section 2(a)(8).[34] It is clear, therefore, that both companies are subsidiaries of North American under the Act and must be regarded as such in this proceeding. Since subsidiary utility companies may be retained in a public utility holding company system *only* where such subsidiary utility companies constitute part of the "single" or any additional integrated system or systems

[34] *The Detroit Edison Company*, 7 S. E. C. 968; *Pacific Gas and Electric Company*, 9 S. E. C. , Holding Company Act Release No. 2988.

retainable by the holding company under Section 11(b)(1) (*The United Gas Improvement Company, et al.*, 9 S. E. C. (1941), Holding Company Act Release No. 2692, at p. 11), and since, for the reasons already stated, neither Detroit Edison nor Pacific Gas and Electric Company is part of the single integrated system or any additional integrated system which may be retained by North American, North American must divest itself of its interests in these companies.[35]

2. *North American's Direct Non-Utility Subsidiaries.* 356

(a) *North American Utility Securities Corporation*—This company was organized under the laws of Maryland in 1924 as a medium for the investment of North American's surplus funds. The company has not been active for some time. Its investment portfolio (consisting of securities whose market value as of December 31, 1940, was $4,667,-

[35]Petitions for review of our orders denying the Section 2(a)(8) applications were filed by Detroit Edison and Pacific Gas and Electric Company. Our order in the former case was sustained by the Circuit Court of Appeals for the Sixth Circuit (*The Detroit Edison Company* v. *Securities and Exchange Commission*, 119 F. (2d) 730 (1941)), and a petition for certiorari was denied by the Supreme Court (62 S. Ct. 105 (1941)). The petition for review in the *Pacific Gas and Electric Company* case is now pending in the Circuit Court of Appeals for the Ninth Circuit. Against the possibility that our order in that case may be reversed on judicial review and that Pacific Gas and Electric may be found not to be a subsidiary of North American, we have thought it appropriate to give respondents the full benefit of our views and consider whether North American might be permitted to retain its interest in Pacific Gas and Electric Company on the theory that such interest constituted a mere investment in a non-subsidiary utility company. We have concluded, however, that even if North American's interest in Pacific Gas and Electric Company were so to be treated, we could not find it retainable under Section 11(b)(1). 357

865)[36] yielded, in 1940, a net return of $279,190. All of the outstanding preferred stock of the company, and 80.6% of the common, is held by North American. As of December 31, 1940, there were dividend arrears on the preferred stock amounting to $25 per share, and there was apparently no equity for the common stock.

The only argument made for retention of the interest of North American in North American Utility Securities Corporation is that it "contributes diversity to the North American system and in no way interferes with the operations of
359 the utility subsidiaries of North American." On that narrow ground North American requests us to find that retention of the interest may be permitted under the "other business" clauses of Section 11(b)(1).

The extent to which diversity was sought in this venture may be tested by noting that one-third of North American Utility's assets consists of stock in a company (Pacific Gas and Electric Company) in which North American's direct and indirect investment is substantial enough to create a statutory parent-subsidiary relationship, and that
360 43.14% of North American Utility's assets consists of utility investments. Moreover, the mere fact that an investment offers "diversity" affords no justification for its retention by a public utility holding company under the "other business" clauses of Section 11(b)(1). A contrary conclusion

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[36] Based on market values, its portfolio was distributed as follows:

Railroad common stock	3.37%
Utility common stock (including 56,900 shares of Pacific Gas and Electric Company common stock, representing approximately ⅓ of total assets)	42.04%
Utility preferred stock	1.10%
Industrial common stock	52.33%
Industrial preferred stock	1.16%

would require the Commission to permit public utility holding companies to operate any type of business, however remote its relationship to the utility business. As we have already pointed out, the standards of the "other business" clauses do not exist in a vacuum, but can be considered only in relation to the operations of public utility systems. The argument that mere diversity of investment justifies the retention by a holding company of an unlimited number of varied interests was presented at length to Congress at the time this legislation was under consideration. In 362
enacting the statute and particularly in enacting Section 11(b)(1), Congress indicated clearly its rejection of this argument.[37] We cannot make the findings necessary under Section 11(b)(1) to permit the retention of North American's holdings in North American Utilities Securities Corporation, and we must therefore order North American to divest itself of these holdings.[38]

(b) *60 Broadway Building Corporation*—This corporation, all of whose stock is owned by North American, was

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[37]"Diversification of risks is a matter of investment judgment to be undertaken by the individual investor or an investment trust, not 363
by those actually controlling and managing operating companies." Report of Senate Committee on Interstate Commerce on S. 2796, p. 12, Report No. 621, 74th Cong., 1st Sess.

In discussing the argument based on geographic diversification of utility properties, the Senate Report states:

> "Even if the argument of diversification were sound, it is outweighed by the political and general economic desirability of breaking up concentrations of financial power in the utility field too big to be effectively regulated in the interest of either the consumer or the investor, and too big to permit the function of democratic institutions." (*Id.*, p. 12.)

[38]It is clear, of course, that whatever our finding as to North American Utility Securities Corporation itself, it could not be used by North American as a vehicle for indirect ownership of stock of Pacific Gas and Electric Corporation which, as we have already held, cannot be retained in the North American system.

364 formed under the laws of New York in 1924. It owns a 25-floor building at the address indicated in its name, in the financial district of New York. Only two floors and part of three others are occupied by North American. The remainder of the building is leased to various unaffiliated tenants.

As of December 31, 1940, 60 Broadway Building Corporation had assets of $4,869,879, outstanding liabilities represented by a mortgage of $1,918,750 and open account indebtedness to North American of $1,659,023, and common stock
365 in the amount of $100,000.

The building owned by this company was acquired by North American for investment purposes and, it is claimed, as a "hedge" against rising rents. During the period between 1928 to 1934, North American paid rent to the corporation at about half the rates charged to other tenants and, in addition, during the years 1928 to 1933, received dividends on its investment. The corporation's net income in 1940, before interest on the open account indebtedness, was $49,293.

366 If it were clear that North American's holdings in this company represented merely an indirect ownership of appropriate office facilities, we should have no difficulty in holding that the interest could be retained under the Act. However, when we consider the location and type of building owned by 60 Broadway Building Corporation and the fact that North American occupies only two floors and a portion of three others, out of the 25 floors in the building, there would seem to be some question whether ownership of this building is not more than ownership of appropriate office space. The record is not sufficiently complete on this point and we think it unnecessary to decide the question at this time. It seems clear that when the North American system com-

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plies with Section 11(b)(1), the needs of North American in respect of office space will be very much altered. Accordingly, we have decided to reserve this question for further consideration in the light of the future needs of North American in this respect.

(c) *West Kentucky Coal Company of New Jersey*—This company, which was formed in New Jersey in 1905, is engaged, directly and through subsidiaries, in mining coal in Kentucky. It has been stated that the company was organized to serve as a source of coal supply to the St. Louis

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operations but that, since this was found to be impracticable, the company's output has been sold almost exclusively to non-affiliated purchasers. As of December 31, 1940, the total book value of the company's assets on a consolidated basis was $16,274,885. North American holds all of its common stock and over 115,656 shares of a total of 120,000 shares of its preferred. In addition, there is a large open account indebtedness running from the coal company to North American. As of December 31, 1940, North American carried its investment in the stock of this company at $3,801,351. The company's net income for 1940 (before preferred stock divi-

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dend requirements) was $42,837.

The only argument advanced in support of the retention of this interest is that the mines operated by the company would afford a source of supply for the Union operations if other sources were closed off. There is no evidence that this contingency has occurred in the 35 years of the coal company's existence. Moreover, federal regulation of coal prices, the power to make priority orders, and the extent of labor organization indicate that contingencies affecting any source of supply of coal usable for electric generation may well affect other similar sources.

370 As we indicate below, in our discussion of the Union Colliery Company, there may be instances in which we can find that ownership of the source of a system's requirements of a vital necessity for utility operations is "reasonably incidental, or economically necessary or appropriate" to the operations of an integrated electric utility system under Section 11(b)(1). However, as has been noted, the output of West Kentucky Coal Company is not used by North American but is sold almost exclusively to non-affiliated purchasers. It is clear, therefore, that North American's
371 holdings in the company do not represent ownership of a vital commodity used in the operations of the public utility system but that they represent merely an investment in a business which bears no relation whatever to the system's permissible utility operations.

Accordingly, we cannot find that retention by North American of West Kentucky Coal Company of New Jersey and its subsidiaries is permissible under Section 11(b)(1).

3. "Other Businesses" of the Union Group.

372 (a) *Steam heating business*—Union Electric Company of Missouri, top company in the Union group, provides steam heat in St. Louis from boilers located in the so-called Ashley Street steam generating station. A total of 414 customers are thus served, and, in 1939, $750,510 of revenue was derived from that business.

The evidence indicates joint use of facilities and personnel in the steam and electric operations. It has also been shown that the joint operations of the steam and electric facilities are closely related. During summer, hydro-electric production must be backed by steam generation because of low water conditions. At the same time the heating peak is low. When the hydro capacity goes up in winter and requires

less steam generation backing, boilers may nevertheless be kept in continuous operation to supply the additional heat. On the basis of the record before us, we find that this steam heating business is reasonably incidental and economically necessary or appropriate to the operations of the electric utility system and that it may be retained under Section 11(b)(1).

(b) *Union Colliery Company*—This company is a direct subsidiary of Union Electric Company of Illinois,[39] which holds all of its outstanding securities. It operates a mine 374
at Dowell, Illinois, about 85 miles southeast of St. Louis. For the year ended June 1940, it produced 1,260,000 salable tons of coal, of which 1,010,000 were sold to the Union group for use in its electric utility operations. This represents most of the coal used by the Union group. Union Colliery's property account, as of September 30, 1940, amounted to $2,375,000. It had a net income in 1939 of $61,408.

North American claims that ownership of this mine represents ownership of a commodity vital to the electric operations of the Union group and affords a continuous supply of coal to the group. It is stated that this continuous supply 375
is particularly important because of the wide variations at different periods in the group's need for coal.[40]

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[39]Union Electric Company of Illinois is in turn a subsidiary of Union Electric Company of Missouri. It owns generating plants in Illinois at Cahokia and Venice, adjacent to St. Louis, and serves he East St. Louis, Illinois, territory with electricity.

[40]The Union group uses steam and hydro-electric generators. Of a total name plate generating capacity of the Union group of 722,500 kw, 237,000 kw are hydro capacity, afforded by generators at Osage, Missouri, and Keokuk, Iowa. The generating policy of the Union group is to supply hydro power to the highest available extent, and thereafter to run steam stations to supply additional loads in the order of their efficiencies. The seasonal variations in available hydro power result in variations in the use of steam generators, and consequent variations in the consumption of coal.

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The distinctions between the problems presented with respect to retention of the Union Colliery Company and the West Kentucky Coal Company (see p. 31, *supra*) are, in our opinion, sufficient to warrant different conclusions. First, although West Kentucky sells very little of its coal to the Union group, over 80 percent of the entire output of the Colliery mines is actually used by the Union group for generating operation. Second, the Colliery Company's mines, which are located close to the utility operations of the system, have been demonstrated by experience to be a convenient and
377 economical source of a commodity vital to the system's electric utility operations. Third, the economies shown to result from joint operation of the Colliery Company and the Union group[41] have been clearly shown to be related to the economic and efficient management of the electric utility system. Fourth, the Colliery Company is wholly owned by Union and appears to be operated as a mere department of the Union group.

For these reasons, we cannot agree with the contention of counsel for the Public Utilities Division that this interest cannot be retained in the system. We find the business of
378 the Union Colliery Company to be reasonably incidental, or economically necessary or appropriate to the electric utility operations of the Union group and hold that it is retainable by the Union group and North American.

(c) *Union Electric Land and Development Company*— This company, a direct subsidiary of Union Electric Company of Missouri, was formed in 1929 to acquire land needed for the development of a hydro-electric plant at the Lake of

[41] *E.g.*, performance of electrical engineering for the Colliery Company by Union group engineers, use of joint office and automotive facilities and personnel.

the Ozarks. The land is no longer desired for that purpose, and the company is at present engaged in a program of liquidating its holdings, which, as of September 30, 1940, were valued at $1,940,000. Although we have been requested by counsel for the Public Utilities Division to find that this business is reasonably incidental, or economically necessary or appropriate to the operations of the integrated public utility system of the Union group, we cannot do so. There is no evidence in the record to justify a finding that the business of the company is retainable under Section 11(b)(1). Indeed, the fact that a voluntary program for 380
liquidation of the company's holdings has been undertaken is some evidence that respondents do not regard the business as economically necessary or appropriate. Should time beyond a year be necessary for liquidation, respondents may apply, under Section 11(c), for an appropriate extension.

(d) *Union group transportation business*—The St. Louis and Belleville Electric Railway Company, a wholly-owned subsidiary of Union Electric Company of Missouri, owns and operates a freight line 11 miles long, on a single track from Belleville, Illinois, to East St. Louis, Illinois. Its 381
investment in railroad property amounts to about $1,300,000. It employs about 60 men. It owns an aggregate of 450 coal cars, many of which it leases to other roads.

The road has had an average net income of $56,000 per annum for the years 1930-1940. It did not, at any time during this period, operate at a loss.

Respondents have argued that the railroad is related to the utility operations of the group in the following respects:

1. Coal is the road's principal cargo, and it moves a large portion of the coal consumed by the group; this

business amounted to about 88% of all the coal hauled by the road between 1935 and 1940;[42]

2. Purchasing, certain warehousing, accounting, recording, property valuation, and tax matters are centrally handled for the railway company, as for other companies in the Union group;

3. The railroad purchases current used in its operations from Union Electric Company of Illinois.

383 Respondents contend that ownership of the road is of great advantage to Union's utility operations and that its retention should be permitted on the ground that such retention provides an assurance against car-shortage—a dire contingency for coal consumers which occurred during the first World War.

We cannot agree with the latter contention. As common carriers, railways have the duty of offering service to all who will pay for it. The jurisdiction of the Interstate Commerce Commission to control the supply of cars,[43] the possibility of car rationing, and priorities and allocation orders by
384 agencies of the government to meet critical transportation needs, make it unlikely that ownership of the road will result in any material advantage, or that non-ownership will cause any material disadvantage in the event of car shortage.

We have, however, permitted, as reasonably incidental and economically necessary or appropriate to North Amer-

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[42]The record does not indicate the precise extent of other business done by the road for unaffiliated interests.

[43]Transportation Act of 1920; see Sections 1(1), (11), (12), (13), (14), and (15). See Monograph No. 11 of the Attorney General's Committee on Administrative Procedure (Sen. Doc. No. 10, 77th Cong., 1st Sess.), pp. 63-65.

ican's utility operations, the retention of the coal mines of Union Colliery Company. It appears that the St. Louis and Belleville Railway is merely a single-track freight line 11 miles long used primarily for the transportation of coal coming from the Union Colliery mines to the Union group. Under the circumstances and having particular regard to the size, location, and use of the road, we find it to be reasonably incidental and economically necessary or appropriate to the electric operations of the Union group, and we hold that it may be retained in the North American system. We think it appropriate to indicate that our finding in this respect 386 approaches what we believe to be the limits of vertical ownership permitted under the Act. And if it should appear in the future that the railroad no longer bears the same relation to the utility operations of the Union group, it might well be necessary to require its divestment from the North American and Union Electric systems.

(e) *Dormant companies*—East St. Louis & Suburban Railway Company and East St. Louis Railway Company, both subsidiaries of Union of Missouri, are completely dormant. It is claimed that these companies are kept alive 387 because of the pendency of litigation arising out of suits commenced while the companies still had assets. No attempt has been made to show that retention of these companies by North American or Union Electric of Missouri would meet the standards of the "other business" clauses of Section 11(b)(1). Disposition of Union of Missouri's holdings in these companies must be ordered.

4. *"Other Businesses" of the North American System*—Many of the other subsidiary holding companies and public utility companies controlled by North American own non-

utility assets or securities of non-utility companies and engage in non-utility businesses. Many of these non-utility businesses are discussed in the course of this opinion. We have not, however, thought it necessary to consider in any detail the non-utility businesses conducted by the Wisconsin-Michigan group, Cleveland Electric Illuminating Company, The Detroit Edison Company, or Pacific Gas and Electric Company. Such evidence as exists in the record with respect to the non-utility businesses of these companies or their subsidiaries indicates no relationship whatever between such
389 business and the utility operations of the Union group. The only relationships shown have been with respect to the operation of the above-named companies. Since we cannot find that there is any relationship between these non-utility businesses and the utility operations of the Union group, we must hold that they cannot be retained by North American under the "other business" clauses of Section 11(b)(1).

Conclusions with Respect to the North American System—In accordance with the foregoing, our order will require North American to divest itself of all of its holdings of
390 securities, direct and indirect, except the securities of Union Electric Company of Missouri, Union Electric Company of Illinois, Mississippi River Power Company, Iowa Union Electric Company, Cupples Station Light, Heat and Power Company, and St. Louis County Gas Company (whose electric operations we have found to constitute North American's principal integrated utility system and whose gas operations we have reserved for further consideration), those of Union Colliery Company and St. Louis and Belleville Electric Railway Company (whose businesses we have found to be reasonably incidental, or economically necessary or appropriate to the retainable utility operations of the North American sys-

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tem), and those of 60 Broadway Building Corporation (which we have reserved for future consideration).

As we have indicated, we have determined to afford North American a further opportunity to present argument with respect to the choice of its principal system. Accordingly, we shall provide that our order, insofar as it requires divestment by North American, shall be subject to modification if a request is made for opportunity to present further evidence or argument in this respect, and if such further evidence or argument warrants modification.

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We proceed to consider the application of Section 11(b)(1) to the sub-holding company respondents.

II. The Holding Company System of Union Electric Company of Missouri

Our discussion with respect to the North American system includes our views on the application of Section 11(b)(1) to Union Electric Company of Missouri as a registered public utility holding company. In accordance with the views there expressed, Union Electric Company of Missouri will be permitted to retain the electric properties of the Union group, which we have found constitute an integrated electric utility system, and—subject to our further consideration of their retainability under the Act—the gas properties of Union Electric Company of Illinois and Iowa Union Electric Company. Union Electric of Missouri will also be permitted to retain its steam heating business and the interests in Union Colliery Company and St. Louis and Belleville Electric Railway Company, which we have found may be retained under the "other business" clauses. Union Electric will be directed to divest itself of its holdings in Union Electric Land and Development Company, East St. Louis & Suburban Railway Company, and East St. Louis Railway Company.

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III. The Holding Company System of Washington Railway and Electric Company

Washington Railway and Electric Company (Washington Railway), a direct subsidiary of North American and a registered holding company, has the following direct and indirect subsidiaries: Potomac Electric Power Company (PEPCO), Great Falls Power Company, The Washington and Rockville Railway Company of Montgomery County (Washington and Rockville), Braddock Light & Power Com-
395 pany Incorporated (Braddock), Capital Transit Company, Montgomery Bus Lines, Incorporated, and The Glen Echo Park Company.

Washington and Rockville, itself a registered holding company, holds all the stock of Braddock and 33.32% of the stock of Great Falls Power Company. Capital Transit Company holds all the securities of Montgomery Bus Lines, Incorporated, and of The Glen Echo Park Company.

The operations of the system controlled by Washington Railway consist of electric operations conducted in the District of Columbia and adjacent portions of Virginia and
396 Maryland, a transportation business conducted in the District and adjacent portions of Maryland, the ownership of certain real estate bordering on the Potomac River, and the operation of an amusement park in Maryland.

PEPCO and Braddock conduct the electric operations of the group. The real estate operations are conducted by Great Falls Power Company; the transportation operations by Capital Transit Company and Montgomery Bus Lines, Inc. The amusement park is owned by The Glen Echo Park Company.

A. *The Principal System*—PEPCO owns an interconnected system of generating transmission, and distribution

facilities in the District of Columbia. Although Braddock is maintained as a separate corporate entity, its territory is contiguous to PEPCO's and it receives all its power from PEPCO sources through interconnections therewith. We find that the utility operations conducted by PEPCO and Braddock together constitute those of a single integrated electric utility system and that these companies are retainable as such by Washington Railway. Since these are the only utility operations of the system, the only other issues to be disposed of with respect to this system are those arising 398 under the "other business" clauses of Section 11(b)(1).

B. *The "Other Businesses" Retainable by Washington Railway.*

1. *Great Falls Power Company*—This company holds title to about 1,050 acres of land bordering the Potomac River. All of its securities are held within the Washington group, 66.68% by Washington Railway, and the remainder by Washington and Rockville. The assets of the company are carried on its books at about $510,000. Camp sites have been erected on the property, and their operation has enabled the 399 company to meet taxes.

Respondents have expressed the opinion that sale of this real estate should be withheld until a "more favorable" market has developed. But, as we have pointed out, considerations of this sort relate only to the time at which compliance with a divestment order should be enforced and have no pertinency to the question whether retention of the real estate is permissible under the Act. Respondents make the further argument that a certain Joint Resolution of Congress permits the retention of this company free of any order of this Commission. For the reasons hereinafter set forth in

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our discussion of this question in connection with Capital Transit, we believe that this argument does not override the express mandate of Section 11(b)(1) and is no bar to an order of divestment. Neither claim has any bearing on whether the business of this company is reasonably incidental, or economically necessary or appropriate to the operations of the single integrated public utility system controlled by Washington Railway. We think it is clear that such a real estate investment does not meet the standards of the "other business" clauses of Section 11(b)(1) and that it
401 cannot be retained by Washington Railway or Washington and Rockville.

2. *Capital Transit Company and Its Subsidiaries*—As of December 31, 1940, Capital Transit's capitalization was:

Funded Debt (including maturities payable within one year)	$15,490,869
Capital Stock, 240,000 shs. of $100 par	24,000,000
Capital Surplus	1,715,839
Earned Surplus	2,890,375
Debt Retirement Reserve (Appropriated Surplus)	300,410
402 Total	$44,397,493

During 1940 the gross income of Capital Transit Company was $1,878,364, and its net income carried to surplus, $872,081. Fifty percent of the stock of Capital Transit is owned by Washington Railway and in 1940 was carried on its books at $19,833,441.

Capital Transit does practically all of the buss and trolley business in the District of Columbia and the adjacent portions of Maryland which it serves. It owns 621 miles of

track, 665 street cars, 80 miscellaneous cars, and 666 busses. It employs 3,709 people and its payroll for the year 1939 was $6,099,684.

In support of their contention that these properties may be retained, respondents point to the long historical association between the electric and transportation properties of the system. Washington Railway was, in 1899, put under the control of Washington Traction and Electric Company in conjunction with several electric companies whose assets Washington Railway later purchased. In 1902 PEPCO acquired these electric utility assets from Washington Railway. 404
In the course of a unification of traction properties in the District, Capital Transit Company in 1933 took over the traction properties controlled by Washington Railway in exchange for its own stock, which stock was acquired by Washington Railway pursuant to a Joint Resolution of Congress.

There is evidence of some joint ownership of electric facilities by PEPCO and Capital Transit Company, and use by PEPCO of facilities owned by Capital Transit and by Capital Transit of certain of PEPCO's facilities. In addi- 405
tion, where equipment owned by Capital Transit Company is situated on property owned by PEPCO, PEPCO's operating force cares for it. There is, however, only one employee of either company who is paid by both.

Montgomery Bus Lines, Incorporated, a subsidiary of Capital Transit, operates a bus line from the District into Rockville and Gaithersburg, Maryland. All of its equipment is rented from Capital Transit Company.

The Glen Echo Park Company, another subsidiary of Capital Transit, operates an amusement park in Maryland, not far from the District. It is claimed that this business

serves to increase traffic on Capital Transit Company lines, and that it is remunerative.

Counsel for North American have argued not only that this vast enterprise, itself a highly complex and individuated business, is "reasonably incidental, or economically necessary or appropriate" to the operations of the single integrated electric utility system of PEPCO and Braddock, but that, in any event, it is beyond our power to order a divestment of Washington Railway's interest in this business.

407 The latter argument is based on the above-mentioned Joint Resolution of Congress of January 14, 1933, which provided (47 Stat. 752):

> "That the Washington Railway and Electric Company is hereby authorized and empowered to retain and hold stocks and bonds as provided in said unification agreement . . ."

As noted above, this Resolution related, *inter alia*, to Washington Railway's acquisition in 1933 of the Capital Transit stock. Respondents assert that it is "a fundamental principle of statutory construction that *general* provisions in a later 408 statute will not be deemed to repeal the *specific* provisions of an earlier statute," and that, therefore, no mandate of the Public Utility Holding Company Act of 1935 can be construed to require divestment of these holdings. It is urged, further, that it "may be assumed" that in passing the Joint Resolution of 1933, "Congress had in mind" the general criteria later to be laid down in Section 11(b)(1) of the Public Utility Holding Company Act.

We are not persuaded by this reasoning. Its weakness is illustrated by the very quotations from decided cases given in counsel's brief. Thus, *Rodgers* v. *United States*, 185 U. S. 83, 87-88 (1902) is cited for the proposition that:

". . . the fact that the one [act] is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, *or unless the provisions of the general are manifestly inconsistent with those of the special.*"[44] (Emphasis supplied.)

We think it is clear that the two Acts are manifestly inconsistent, within the meaning of the rule laid down in the *Rodgers* case. The Joint Resolution was addressed to a specific situation presented to Congress by private parties to 410
facilitate private action by a corporation subject to the power of Congress. But the declaration of Congress in 1935, that a public utility holding company system must be limited to a single integrated public utility system, permissible additional systems, and such businesses as are reasonably incidental or economically necessary or appropriate thereto, is clearly a sufficient warrant to us to order compliance by Washington Railway with the mandate of Section 11(b)(1).

"No principle is better settled than that a special charter to any corporation to engage in a business of a 411
public or quasi public nature cannot be set up as exempting the institution from that regulation by the state in the exercise of its police power which the public necessity demands." *Citizens Bank & Trust Co.* v. *Mabry*, 102 Fla. 1084, 136 So. 714, 716 (1931).

See, too, *Texas and New Orleans R. R. Co.* v. *Miller*, 221 U. S. 408 (1911); *State ex rel. Davis* v. *Knight*, 98 Fla. 891, 124 So. 461 (1929); *Kentucky Power & Light Co.* v. *City of Maysville*, 36 F. (2d) 816 (E. D. Ky. 1929); and *cf. Hammond Packing Company* v. *Arkansas*, 212 U. S. 322 (1909).

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[44]See, too, *Washington* v. *Miller*, 235 U. S. 422, 428 (1914).

We have set forth at length, heretofore, our views as to the meaning of the "other business" clauses of Section 11(b)(1). Nothing presented to us respecting retention of Capital Transit Company or its subsidiaries has convinced us that we can find, in accordance with those views, that the retention of such transportation properties and amusement park is reasonably incidental, or economically necessary or appropriate to the operations of the integrated electric system of PEPCO and Braddock under the standards of Section 11(b)(1). Indeed, we think that one of the clearest Con-
413 gressional objectives, in enacting Section 11(b)(1), was to require that public utility holding company systems divest themselves of huge investments in unrelated fields such as the vast and complex transportation business of Capital Transit and the amusement park of The Glen Echo Park Company.

Washington Railway and Electric Company will be required to limit its operations in accordance with the foregoing. Accordingly, it will be directed to dispose of all interests, direct and indirect, in Great Falls Power Company and Capital Transit Company and its subsidiaries.
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IV. The Holding Company System of Washington and Rockville Railway Company of Montgomery County

As we have indicated in our discussion respecting Washington Railway, Washington and Rockville will be required to divest itself of its holdings in Great Falls Power Company. Since the holding of Braddock and Great Falls Power stock constitutes the only business of Washington and Rockville, and since we have found that the properties of Braddock constitute part of an integrated utility system retainable by

Washington Railway and by Washington and Rockville, this is the only action necessary for Washington and Rockville to comply, as a registered holding company, with Section 11(b)(1).

North American Light & Power Company

As previously noted, we have ordered the dissolution of Light & Power pursuant to Section 11(b)(2) of the Act. 10 S. E. C. —— (1941), Holding Company Act Release No. 3233. We assume that Light & Power will be dissolved in 416
accordance with our order and that there will no longer be a holding company system headed by Light & Power. Under the circumstances, we find it unnecessary to consider the requirements of Section 11(b)(1) as they affect the Light & Power system. However, the dissolution of Light & Power will not, in and of itself, avoid the necessity for applying the mandate of Section 11(b)(1) to the holding company systems headed by subsidiaries of Light & Power which are themselves registered holding companies. These sub-holding company systems are headed by Northern Natural Gas Company and Illinois Traction Company (both of which are 417
direct subsidiaries of Light & Power), Illinois Iowa Power Company (a subsidiary of Illinois Traction), and Des Moines Electric Light Company (a subsidiary of Illinois Iowa Power Company).

V. The Holding Company System of Northern Natural Gas Company

Northern Natural Gas Company is a Delaware corporation, organized in 1930, with offices at Omaha, Nebraska. At the time this record was closed, 35% of its common stock

was held by Light & Power, 35% by United Light and Railways Company, a subsidiary of United Light and Power Company, and 30% by Lone Star Gas Corporation.[45] Northern is itself an operating company as well as a registered holding company. It owns transmission lines and sells natural gas at wholesale for redistribution and for industrial use. Its transmission lines, which constitute the major portion of its assets, tap fields in Texas and Kansas and run for a distance of 2,783 miles through Oklahoma, Kansas, Nebraska, South Dakota, Iowa, and Minnesota.
419 Northern is not a "gas utility company" as that term is defined in Section 2(a)(4) of the Act.[46]

Northern owns all of the common stock of its two subsidiaries, Peoples Natural Gas Company and Argus Natural Gas Company. Peoples and Argus maintain facilities for the sale of natural gas at retail and are gas utility companies within the meaning of the Act.

Peoples sells natural gas at retail in 66 cities and towns in 3 separate areas located in eastern Nebraska, central Iowa, and southern Minnesota (which latter area laps over into

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[45] Since the close of the record in this proceeding, applications have been filed for approval of a reclassification of Northern Natural Gas Company's stock preliminary to a proposed public offering of the holdings of North American Light & Power in that company (File No. 70-286) and for approval of such an offering (File No. 70-302). The former application has been approved. *Northern Natural Gas Company, et al.*, 9 S. E.C. —— (1941), Holding Company Act Release No. 2815. The proceeding in respect of the latter application is still pending.

[46] Section 2(a)(4) provides, in part:

> "'Gas Utility company' means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power."

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Northern Iowa). In 1940 Peoples served a total of 19,513 customers with over 3,500,000 mcf. of gas. All of Peoples' gas supply is derived from its parent, Northern.

Argus' properties are located in southwestern Kansas. It sells natural gas in 15 communities and 7 counties in that part of the State, and in 1940 served 5,575 gas customers to whom 2,337,860 mcf. were sold. Argus owns about 200 miles of gas transmission lines and distribution systems connected thereto. It purchases its gas requirements principally from non-associated producers in the Kansas Hugoton field and to a small extent from its parent, Northern.

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Northern, Peoples, and Argus, taken together, serve areas aggregating 25,000 square miles, containing a population of 850,000 persons. On a consolidated basis, as of December 31, 1940, the group had fixed assets carried on the books at $55,384,707,[47] and total operating revenues for 1940 of $12,857,002. During 1940, the group sold 55,873,808,000 cubic feet of gas.

Counsel for Light & Power have requested us to find that the operations of Northern, Peoples, and Argus constitute those of a single integrated gas utility system. Such a finding cannot be made under the statute.

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Section 2(a)(29)(B) defines an integrated gas utility system as one—

> "consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, effici-

[47] Of this total, Northern's fixed assets were carried at $49,753,568, Peoples' at $2,835,241, and Argus' at $2,598,858.

ent operation, and the effectiveness of regulation: *Provided,* That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region."

As has been noted, Argus purchases almost all of its gas from non-affiliated sources, while Peoples acquires its gas from Northern. The operations of the Argus properties have a much less important relationship to those of Northern than do the operations of Peoples. Moreover, there are
425 important differences in their methods of operation. From the evidence in the record we cannot find that there are substantial economies, or indeed any economies, resulting to Argus from joint ownership and control of its properties together with Peoples. Accordingly, Argus cannot be regarded together with Peoples and Northern as part of a single integrated system and it can be retained in combination with Peoples only if its retention satisfies the standards of the (A), (B). (C) clauses.

A. *The Principal System*—We must, in order to dispose of the issues before us, base our opinion on one of the inte-
426 grated systems controlled by Northern as the "principal system." Northern has not indicated any choice in this matter. For the reasons hereinafter set forth we have concluded that clauses (A) and (C) would bar the retention by Northern of both Peoples and Argus. Since the Peoples system has assets valued at $2,835,241 as against Argus' assets of $2,598,858, since Peoples' net income for 1940 was $203,137 as against Argus' $100,242, and since, for the reasons hereinafter discussed, we find that Northern can retain its directly owned transmission lines along with Peoples (while such retention could probably not be permitted if Argus were kept as the principal system), we assume that,

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faced with a choice, Northern would elect Peoples as its principal system. We should not be disposed to question such a choice. Consequently, we shall base the remainder of our discussion and our order on Peoples as the principal system in the Northern holding company group. However, we will afford Northern a further opportunity to present argument, if it so desires, with respect to this question.

It has been suggested that the transmission lines of Northern may be considered together with the properties of Peoples as a single integrated gas utility system. As we have pointed out, however, Northern is not a gas utility company within the meaning of the Act and there is considerable question whether, under Section 2(a)(29)(B) the facilities of companies which are not gas utility companies can be regarded as part of an integrated gas utility system. The definition in Section 2(a)(29)(B) refers exclusively to "gas utility companies," and it is suggested that this exclusive reference precludes any intention to comprehend within an integrated gas utility system companies which are not gas utilities under the Act. However, we need not now decide this question since, for the reasons hereinafter stated, we find that in any event Northern can retain the transmission lines along with Peoples under the "other business" clauses of Section 11(b)(1).

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B. *The Additional Systems Retainable by Northern*—Taking Peoples as the principal system, the retention of Argus would satisfy clause (B) of Section 11(b)(1) since Argus is located in Kansas and some of Peoples' properties are located in Nebraska, which adjoins Kansas.

As we have stated, the evidence in the record is insufficient to enable us to determine that there are substantial economies, or indeed any economies, resulting from joint

430 ownership of Peoples' and Argus' properties. Argus purchases most of its gas from non-affiliated sources, while Peoples acquires almost all of its gas from Northern. There are physical differences in the properties of Argus and Peoples; different installation standards, different practices respecting meter ownership and testing. We could not, therefore, make the finding required by clause (A) to permit the retention of Argus as an additional system. However, even were such a finding possible, clause (C) would bar such retention.

431 The record does not show that the centralized control of Argus and Peoples leaves, to each of them, the advantages of localized management. The evidence which merely shows divisional maintenance, location of local offices, and localization of retail activities, is not sufficient. When in fact management is highly centralized, as it is in Northern's main office at Omaha, and there is no evidence as to the local nature of important policy determinations, we cannot find that the advantages of localized management are not impaired by central control. We believe that under clause (C) no combination of systems should be permitted which would

432 impair true localization of management and policy-making. Otherwise, as is the case in the area in which Northern operates, small communities are pitted against strong "absentee control" with respect to matters vitally affecting the interests of the communities. Insofar as possible, we are required under Section 11(b)(1) to insure local management responsive to local needs and local public feeling.[48]

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[48] "An operating system whose management is confined in its interest, its energies, and its profits to the needs, the problems, and the service of one regional community is likely to serve that community better, to confine itself to the operating business, to be amenable to local regulation, to be attuned and responsible to the fair demands

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C. *The "Other Businesses" Retainable by Northern*—The great bulk of Northern's assets is represented by its directly held production and transmission properties. Of a total of group assets (*i.e.*, the assets of Northern, Peoples, and Argus) of $55,384,707, almost $50,000,000 is represented by the production and transmission facilities owned by Northern.

The question presented here is whether this vast enterprise can be regarded as "reasonably incidental, or economically necessary or appropriate" to the operations of any integrated system retainable by Northern. In general, the pattern of the statute and the context of the relevant statutory provisions seem to indicate that the "other business" tests are not to be applied to operations grossly out of proportion to the utility business with respect to which they are claimed to be "reasonably incidental, or economically necessary or appropriate." In the ordinary case, therefore, we believe the statute contemplate that after compliance with Section 11(b)(1) the integrated utility systems retainable by a registered holding company will constitute its primary business and that retainable non-utility interests will occupy a clearly subordinate position. However, the problems in the natural gas utility industry and the problem in this case, in particular, present an exceptional situation. Northern's pipe lines supply all of People's gas and appear to be vital

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of the public, and, more often, to get along with the public to mutual advantage . . . Essentially local systems will tend to operate utilities rather than to play with high finance; and essentially local enterprise is far less likely to accumulate a disproportionate amount of political and economic power." (Report from the Committee on Interstate Commerce, 74th Cong., 1st Sess., Report No. 621 to Accompany S. 2796, May 13, 1935, p. 12.)

to its operations.[49] Although there may be some question whether Section 2(a)(29)(B) permits us to regard the facilities of Northern as part of the "integrated gas utility system" of Peoples, we believe it has been shown that the joint ownership of these facilities satisfied the standards of the "other business" clauses and that Northern may therefore retain its transmission lines in combination with the properties of Peoples.

We cannot emphasize too strongly, however, that our conclusion with respect to the retention of the transmission
437 lines of Northern as a permissible "other business" is highly conditioned by the facts of this case—and particularly by the fact that the question here presented is one of a natural gas utility company deriving its entire gas supply from transmission lines which bridge the gap from the source of supply to the ultimate consumer.[50]

Conclusions with Respect to Northern Natural Gas—At present Northern is a registered holding company and a respondent in this proceeding. We must, therefore, require its compliance with Section 11(b)(1). In accordance with
438 the foregoing, and subject to a further opportunity to be afforded to Northern for the presentation of its views as to the choice of a principal system, our order will direct Northern, as a registered holding company, to divest itself of its interest in Argus Natural Gas Company.

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[49]This is not the case with respect to Argus, which purchases almost all its gas from non-affiliated sources.

[50]See Hearings before the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess., on S. 1725, at p. 673. See, too, *id.*, pp. 148, 958; and Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 74th Cong., 1st Sess., on H. R. 5423, pp. 1747, 1794-95, 1865, 2254, 2280.

VI. The Holding Company System of Illinois Traction Company

Illinois Traction Company, a subsidiary of Light & Power and itself a registered holding company, is not engaged directly in any business other than that of a holding company. It has 16 direct and indirect subsidiaries, some of which are actively engaged in the gas and electric utility, ice, steam, water, transportation, and terminal businesses, and some of which are inactive.

As of December 31, 1940, the capitalization of Illinois 440
Traction Company was as follows:

6% cumulative preferred stock (217 shs. of $100 par value)	$ 21,700
Common stock (115,723 shs. of $100 par value)	11,572,300
Surplus (Deficit)	(14,920,039)

At the same date it was indebted to Light & Power to the extent of $12,695,317, which is not included in the above surplus deficit figure. It has not paid dividends on its preferred stock since January 1, 1933. Light & Power holds 441
70 shares of its preferred and 115,666 shares of its common stock.

Illinois Traction carries its own investments at $23,588,526. The largest of these is its investment in 300,000 shares of common stock (of a total of 783,805 shares outstanding) of Illinois Iowa Power Company, which is carried at $21,563,597.[51]

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[51] In addition, Illinois Traction held 300,000 warrants to purchase an equal number of shares of Illinois Iowa's common stock. These warrants are carried on Illinois Traction's books at $1. Light & Power had direct interests at December 31, 1940, in Illinois Iowa

Although the statement was made on the record that Illinois Traction Company was to be dissolved, it is still before us as a registered holding company and a respondent in this proceeding, and we must order it to comply with the requirements of Section 11(b)(1).

Illinois Traction's subsidiaries operate two large electric utility systems and several smaller electric properties. One of the larger systems, located in northern, central, and southern Illinois, is operated by Illinois Iowa Power Company and Kewanee Public Service Company, both direct subsid-
443 iaries of Illinois Traction. The other, in south central Iowa, is operated by Des Moines Electric Light Company, a subsidiary of Illinois Iowa, and Iowa Power and Light Company, a subsidiary of Des Moines.

The capitalization of Illinois Iowa, as of December 31, 1940, was:

Funded Debt	$ 97,228,100
Preferred Stock	24,175,000*
Common Stock	19,595,125
Earned Surplus (since May 1, 1937)	7,137,746
444 Paid-in Surplus	14,168,648
Total	$162,304,619

* Dividend arrears on this stock amounted to $4,432,083 in 1940.

through ownership of 4,800 shares of 5% cumulative convertible preferred stock, 800 certificates for dividend arrears and $16,000 principal amount of 5½% debentures, the aggregate carrying value being $139,215.

North American carried a small direct investment in Illinois Iowa common stock at $53,085, and carried a direct investment in its preferred at $155,795. In addition, it held directly dividend arrears certificates carried at December 31, 1940, at $56,547, and funded debt carried at an aggregate of $621,734.

After deduction of depreciation reserves, the property and plant account of the company amounted to $92,547,632, as of this same date. It carried investments in its subsidiaries at $67,123,872.[52]

Kewanee, whose operations are closely related to the electric operations of Illinois Iowa, carries its plant and property at $2,160,897 (with a depreciation or retirement reserve of $346,987).

The combined net income of both these companies in 1940 was $2,078,194. Illinois Iowa accounted for $2,073,198 of this amount. 446

The capitalization of Des Moines and Iowa Power and Light, (whose electric operations are closely related and which we find, for reasons hereinafter stated, together operate a single integrated electric utility system) at December 31, 1940, was:

Long Term Debt	$13,216,000
Advances from Illinois Iowa	3,300,000
Preferred Stock	6,323,300
Common Stock	6,700,000
Surplus	2,303,963
Total	$31,843,263

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[52]On August 22, 1941, we issued a notice of and order for hearing (Holding Company Act Release No. 2953) instituting proceedings under Section 11(b)(2) of the Act against Illinois Iowa Power Company. The order makes the tentative charge that, upon the basis of an examination of the corporate structure of Illinois Iowa and its subsidiaries, it appears to the Commission that:

"The corporate structure of Illinois Iowa Power Company unduly and unnecessarily complicates the structure and unfairly and inequitably distributes voting power among security holders of the holding company system of which it is a part."

This proceeding is now pending before us.

Illinois Iowa holds all the common stock of Des Moines and $1,750,000 of Des Moines' bonds, which holdings it carries at $8,839,387.

The total operating revenues of Des Moines and Iowa Power and Light in 1940, on a consolidated basis, were $7,086,710 and net income, upon the same basis, was $1,575,688.

The securities of Iowa Power and Light are held as follows:

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Security	*Amount*	*Held By*
Funded Debt	$11,466,000	Public
Preferred Stock	6,372,900	$49,600 by Des Moines, remainder by public
Common Stock	2,500,000	Des Moines

A. *The Principal System* — Neither Illinois Traction Company nor Illinois Iowa Power Company has indicated its choice of any "principal system." In order to dispose of the issues here raised, we have decided to base this opinion and our order herein on the largest and most important electric utility system included in the operations of Illinois Iowa 450 and Kewanee as the principal integrated system of Illinois Traction Company, and of Illinois Iowa. However, Illinois Traction and Illinois Iowa will be afforded a further opportunity to present argument, should they so desire, on the appropriateness of this choice of their principal system. Our order, insofar as it requires divestment by Illinois Traction and Illinois Iowa, will be subject to modification if after presentation of further argument or evidence in this respect, such modification should appear to be necessary.

The principal system upon which our opinion and order herein are based includes the electric operations of Illinois

Iowa in the three large areas in northern, southern, and central Illinois and in the area in Sangamon and Logan Counties, together with the electric operations of Kewanee Public Service Company.

Respondents have asserted that the limits of the system thus described are too narrowly confined. They contend (1) that certain electric operations conducted by Illinois Iowa in four additional areas must be considered together with the other electric operations of Illinois Iowa and Kewanee as part of a single integrated electric utility system, and (2) 452 that the electric operations of Des Moines and Iowa Power and Light must also be considered together with all the electric operations of Illinois Iowa and Kewanee as a single integrated system.

1. The additional electric operations conducted by Illinois Iowa, to which respondents' first contention relates, are relatively small in size and are located in the central and southern portions of Illinois, in regions around Jacksonville, Enfield, Eldorado, and Cairo, respectively. Although the main areas which we have held constitute the principal integrated system are physically interconnected by means of 453 lines owned, or leased for joint use, no such connections exist among any of the four small areas, or between any of them and the main areas. The only physical interconnection which may be said to exist between the smaller areas and the principal operations of Illinois Iowa results from the fact that facilities in the smaller areas are connected with facilities operated by Central Illinois Public Service Company, a non-affiliated company whose territory adjoins that of Illinois Iowa.

We cannot find that the operations in these smaller areas can be considered together with the principal operations of

Illinois Iowa as a single integrated electric utility system. In determining the boundaries of an integrated electric utility system under Section 2(a)(29), we must find that the utility assets included therein are physically interconnected or are capable of such interconnection, *and* that these utility assets under normal conditions may be "economically operated as a *single interconnected and coordinated system*" (Emphasis supplied.) We think it clear that the quoted language refers to the *physical* operation of utility assets (not the management of the company or companies owning
455 them) as a *single interconnected and coordinated* system; that is, a system in which (*inter alia*) the generation and/or flow of current within the system may be centrally controlled and allocated as need or economy directs, and which is operated as a unit. Thus, even though we find physical interconnection exists or may be effected, evidence is necessary that in fact the isolated territories are or can be so operated in conjunction with the remainder of the system that central control is available for the routing of power within the system. We can make no such finding with respect to the four
456 smaller areas. Power sold by Illinois Iowa in the Jacksonville, Enfield, and Eldorado areas is purchased from the Central Illinois Company. The Cairo area has a generating station, but Illinois Iowa's management regards it as more economical to purchase power for that area from the same company. Although it has been admitted that present interconnection of the four smaller areas with the rest of the system by facilities of Illinois Iowa is not "economical" or "provident," it is claimed that the operation of the electric facilities in these areas is "thoroughly coordinated" and "efficiently carried on." This may be true with respect to corporate management, but the record does not convince us

that all of the electric facilities of Illinois Iowa are, or can be, operated physically *as a single interconnected and coordinated system.*

2. Nor can we agree with respondents' contention that the electric operations of Des Moines and Iowa Power and Light, located in southern Iowa, should be considered together with the electric operations of Illinois, Iowa and Kewanee as a single integrated electric utility system.

It has been stipulated that these properties are capable of physical interconnection. However, the evidence indicates 458
that they are separately operated and that at present there is no physical connection betwen them except through facilities owned by other companies and running through foreign service territories. There is nothing in the record which would indicate that physical interconnection of the two properties by means of their own facilities is contemplated or is possible within the reasonably near future. The statute defines an integrated electric system as one—

> "consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation." (Section 2(a)(29).) 459

There has been no attempt to show that the Illinois and Iowa properties are at present operated as a "coordinated"

system, or that such operation under "normal" conditions is possible. While we need not here discuss all the possible meanings of the term "normal conditions," certainly it does not refer to conditions which might occur in the remote future, and whose occurrence has not been foreshadowed by any facts shown in the record. Accordingly, we cannot find that the Illinois and Iowa properties together constitute a single integrated electric utility system.

We conclude, therefore, that the electric operations of Illinois Iowa in the four main service territories in northern,
461 central, and southern Illinois, together with the electric operations of Kewanee Public Service Company, constitute those of a single integrated electric utility system within the meaning of the Act. We find further that the electric operations of Illinois Iowa conducted in and around Jacksonville, Enfield, Eldorado, and Cairo constitute four separate and additional integrated electric utility systems, and that the electric operations of Des Moines and Iowa Power and Light constitute still an additional integrated electric utility system.

462 B. *The Additional Utility Systems Retainable by Illinois Traction Company.*

1. *The Additional Electric Utility Systems*—We must consider next whether the four smaller integrated electric utility systems of Illinois Iowa and the integrated electric utility system of Des Moines and Iowa Power and Light are retainable as additional systems to that of the principal system of Illinois Iowa and Kewanee. Since all of these systems are located in Illinois and Iowa, clause (B) does not bar their retention by a single holding company.

We find that the four smaller systems of Illinois Iowa cannot be operated as independent systems without the loss

of substantial economies which can be secured by their retention under joint control together with the principal system of Illinois Iowa and Kewanee; and that the combination of all of these systems under the control of a single holding company is not so large as to impair the advantages of localized management, efficient operation, and the effectiveness of regulation. Accordingly, we hold that the four smaller systems of Illinois Iowa may be retained in addition to the principal system of Illinois Iowa and Kewanee. We cannot find, however, that the electric utility system of Des Moines and Iowa Power and Light can be retained as 464
an additional system under the statute.

The principal argument advanced with respect to retention of the electric utility system of Des Moines and Iowa Power and Light is based on the claim, already disposed of, that it and the electric properties of Illinois Iowa constitute a single system. However, Light & Power has also requested findings that the electric utility system of Des Moines and Iowa Power and Light cannot be operated independently without the loss of substantial economies and that the combination of these properties together with the electric operations of Illinois Iowa and Kewanee would satisfy clause 465
(C).

The testimony of C. A. Leland, president of both the Des Moines and Iowa Power and Light companies, is cited to us for the proposition that substantial economies would be lost by a severance of the systems. We can find no support in the record for this claim. Some of this testimony represents the witness' opinion as to the advantages of holding companies generally. Some of it is evidence of contact with North American and its direct subsidiaries—of little value in assessing the relationship between the Illinois Iowa and

the Des Moines and Iowa Power and Light systems. Neither system has any substantial contacts in respect of its operations with either Illinois Traction Company or Light & Power.[53] The evidence respecting the relationship between the two systems does show that the Des Moines and Iowa Power companies pay salaries to certain personnel of Illinois Iowa for services performed.[54] However, upon careful consideration of the record, we cannot find that it has been shown that severance of the affiliation of these systems would deprive either of them of irreplaceable services, or involve
467 such an increase, if any, in the cost of benefits now received from intra-system contacts that the loss of substantial economies would result from the operation of each as an independent system.

Since we cannot find that clause (A) would be satisfied by the retention of both systems under common control, we must order Illinois Traction Company to divest itself of the electric utility system operated by Des Moines and Iowa Power and Light.

It may be appropriate also to cite one important factor which bears on the question whether the retention of the
468 Illinois and Iowa systems in combination would meet the standards of clause (C).

It has been stated that the Iowa companies are subject to regulation by the Iowa State Commerce Commission with respect to the routing of gas and electric transmission lines

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[53]The only evidence of any such contact is that of a single instance of aid by Allen Van Wyck, president of Light & Power, in a Des Moines financing in 1938.

[54]This evidence shows instances of engineering and chemical consultation and aid to Des Moines in 1936 and 1939, assistance in rate matters, exchange of advertising and other promotion information, and aid in accounting and taxation problems.

and the standards of their construction. However, rates are not centrally regulated but are the subject of negotiation with individual communities served by the Iowa companies. The absence of such central regulation makes it particularly necessary to apply rigorously the standards of clause (C) to insure the localization of each system's policy determinations. When the making of policy is in the hands of men who are not in their daily business activities responsive to local public feeling, and when the great resources of holding companies are pitted against local communities in their attempts at regulation, the growth of the holding company 470 results in a direct impairment of "effective public regulation." (See Section 1(b)(5).) Section 11(b)(1) is designed to limit such growth and to correct such situations where they exist at present. It must be interpreted to achieve that result. For that reason alone we could not find that the combination of the Illinois and Iowa systems under joint control would meet the standards of clause (C).

2. *The Additional Gas Utility Systems*[55]—All of the four electric utility subsidiaries of Illinois Traction Company (*i.e.*, Illinois Iowa, Kewanee, Des Moines, and Iowa Power 471 and Light) are also gas utility companies. Another subsidiary, Cahokia Manufacturers Gas Company, owns only gas facilities which are leased to Illinois Iowa.

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[55]We have been asked to find that all of the electric and gas operations of Illinois Traction's subsidiaries in Illinois and Iowa taken together constitute a single integrated system. This request must be rejected. First, we have already pointed out that gas and electric properties may not be retained together as parts of a *single* integrated system. *Columbia Gas & Electric Corporation*, 8 S. E. C. —— (1941), Holding Company Act Release No. 2477; *The United Gas Improvement Company, et al.*, 9 S. E. C. —— (1941), Holding Company Act Release No. 2692. Second, we have held that the combination of the electric properties alone cannot be regarded as a single system.

472 Illinois Iowa and Kewanee, in 1940, distributed gas to 54 communities in 11 isolated areas in the State of Illinois. A total of 99,600 gas customers was served with 23,320,000 therms of gas, and these sales accounted for approximately 15% of the $21,605,000 aggregate operating revenues on a consolidated basis of these companies. The only territory served with gas by Illinois Iowa and Kewanee, which is not also served with electricity, lies in and around East St. Louis. Eight gas production plants are owned and, in 1940, gas was also purchased from three unaffiliated sources. It is
473 stated that the flow of gas from all sources is centrally directed from Decatur.

The gas facilities owned by Illinois Iowa and Kewanee consist of relatively small separate branch transmission lines serving separate retail systems and a transmission line fed with enriched manufactured gas out of East St. Louis. The transmission lines serving the various retail areas in Illinois are not generally physically interconnected. As of December 31, 1940, the total book value of fixed assets used in the electric operations of Illinois Iowa and Kewanee was $65,614,537, and the book value of fixed assets used in the
474 gas operations was $22,806,652.

We need not decide now, and indeed the evidence is such that we cannot decide, the number or the confines of the integrated gas utility systems controlled by Illinois Iowa, Kewanee, and Cahokia Manufacturers Gas Company. Their retention, together with the retainable electric operations of Illinois Iowa Kewanee, would not be barred by clause (B) since, except for the territory of East St. Louis, the gas operations cover the same area as the retainable electric operations. The evidence introduced to show that the standards of clauses (A) and (C) have been met indicates some

evidence of joint use of facilities, personnel, and management. But, here again, we do not think the record contains an adequate exploration of the relevant evidence bearing on this question. (Compare the discussion *supra*, pp. ——, of the retainability of the gas operations of the Union group and St. Louis County Gas Company.) We have therefore decided not to make any findings on this matter at this time. The record will be reopened for the purpose of receiving further evidence bearing on the permissibility under the Act of retention of these gas operations in addition to the retainable electric operations of Illinois Iowa and Kewanee. Our 476 order setting the date for the further hearing will contain a statement of the specific matters on which we desire to have additional evidence presented.

There is no evidence in the record which would permit us to find that the gas operations conducted by Des Moines and Iowa Power and Light may be retained. The evidence introduced in this respect deals only with the relationship existing between the gas and electric operations of these two companies. We have already held that these electric properties must be disposed of, and we cannot find that their gas operations meet the standards of clauses (A), (B), and 477 (C) in relation to the properties of Illinois Iowa, Kewanee, or Cahokia Manufacturers Gas Company.

C. *The "Other Businesses" Retainable by Illinois Traction Company*—Non-utility operations in the Illinois Traction system are conducted by Western Illinois Ice Company, a direct non-utility subsidiary of Illinois Traction Company, by Illinois Iowa and two of its subsidiaries, Illinois Terminal Railroad Company and Central Terminal Company, and by Des Moines Electric Light Company.

1. *Illinois Traction's Direct Non-Utility Subsidiary.*

(a) *Western Illinois Ice Company*—This company operates ice manufacturing plants in Galesburg and Kewanee, Illinois. Its net operating revenues in 1940 amounted to $35,603. It purchases current from Illinois Iowa and certain services are performed for it by Illinois Iowa personnel. Illinois Traction, which holds all its common stock, carried that investment at December 31, 1940, at $235,755. No claim has been made that retention of this business is warranted
479 under the "other business" clauses, and, on the record before us, we cannot find, under the standards of Section 11(b)(1), that its retention is reasonably incidental, or economically necessary or appropriate to the operations of any retainable utility system of Illinois Traction. Accordingly, divestment thereof must be required.

2. *"Other Businesses" of Illinois Iowa.*

(a) *Steam heating business*—Seven communities in the service territory of the electric operations of Illinois Iowa are supplied with steam generated in boilers located in elec-
480 tric generating stations, and operated by personnel also engaged in the electric operations. The business produced net revenues before taxes and depreciation of $70,118 in 1940, and had an aggregate of $1,975,330 of assets at December 31, 1940. The supplying of steam is intimately related to the operations of the electric utility systems of the company, and we find that the business is retainable as reasonably incidental, or economically necessary or appropriate to such operations.

(b) *Water business*—Water service is rendered in three communities which are in the service areas of Illinois Iowa's

481

electric operations. This business produced net operating revenues, in 1940, of $30,210. As of the end of 1940, the book value of fixed assets used in the business was $1,371,598. In one of the communities served (Marseilles), pumping equipment is located in one of Illinois Iowa's generating stations. All energy used in the water business is supplied by Illinois Iowa. It is stated that though efforts have been made to sell this water business, it has been found "almost impossible" to procure an "even approximately satisfactory" offering, and that the Illinois Commerce Commission would not permit an abandonment of the business.

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We have already noted that arguments based on the asserted difficulty of disposition of a property are irrelevant in a consideration of whether it may be retained under the standards of Section 11(b)(1). Such arguments are pertinent only to the question when compliance with a divestment order should be enforced. The only other claims asserted to support the retention of this business are that it is a customer of Illinois Iowa and that it maintains some of its equipment in one of Illinois Iowa's generating stations. We cannot find that these facts show such a relationship between this water business and the operations of the retainable utility operations as would justify a finding that retention of this business meets the standards of Section 11(b)(1). We must therefore order its divestment.

483

(c) *Ice business*—Illinois Iowa operates ice manufacturing plants in five Illinois communities. These operations produced net operating revenues before taxes and depreciation in 1940 of $10,357. Current for the business is provided by Illinois Iowa.

No claim has been made that this business is retainable and since we cannot find that it is reasonably incidental, or

economically necessary or appropriate to the operations of the retainable utility systems, our order will require its divestment.

(d) *Oil drilling*—Certain territory around Centralia (in the area of Illinois Iowa's electric operations) is proven oil land. Illinois Iowa has constructed three oil wells in this territory and invested about $56,000. They have produced, since their operation, an income, after all expenses and taxes, of $60,000. The oil has, to some extent, been used in the
485 Centralia gas plant of the company for the production of carburetted water gas. It has, it is claimed, also been used in other plants of the company after having been repurchased from the pipe line company to which it was sold.

On the basis of the record before us, we cannot find that a sufficient relationship between this oil business and the operations of the retainable utility systems has been shown to justify a finding that retention of the oil business meets the standards of Section 11(b)(1). Accordingly, its divestment must be ordered.

(e) *Transportation business*—Illinois Iowa conducts a
486 street railway, trolley, and gasoline motor bus service in Peoria, Illinois, which is outside its utility service territory. Power for these properties has been purchased from unaffiliated sources. The business produced, in 1940, net operating revenues before taxes and depreciation of $196,436 on an investment in fixed assets carried at $5,392,000. It has been stated that attempts have been made to sell the properties, but that the prices offered have not been deemed sufficient.

The record does not warrant a finding that retention of this business is reasonably incidental, or economically necessary or appropriate to the operations of the retainable utility systems of Illinois Traction. Its divestment must be ordered.

487

(f) *Illinois Terminal Railroad Company and Central Terminal Company*—Illinois Terminal Railroad Company is an Illinois corporation organized in 1937 to take over the consolidated properties of five railroad companies. Its general office is in St. Louis, Missouri, and its property is located in Missouri and Illinois. As of December 31, 1940, the Railroad Company had outstanding:

Funded Debt	$14,229,000
Advances from Illinois Iowa	492,325
Common Stock	25,000,000

488

All of its common stock is held by Illinois Iowa.

Central Terminal Company owns and operates a warehouse and office building in St. Louis in which terminal facilities are supplied. These latter facilities are leased to the Railroad Company. The Terminal Company also conducts certain minor real estate operations. As of December 31, 1940, the book value of its fixed assets amounted to $6,901,286. As of the same date, the Terminal Company had outstanding:

489

Funded Debt	$ 725,000
Advances from Illinois Iowa	4,648,063
Common Stock	1,000,000

All of its common stock is held by Illinois Iowa.

The Railroad Company operates a steam and electric road whose tracks form a web around St. Louis and East St. Louis and run thence up to Peoria, in central Illinois, form a loop at Springfield, Mackinaw, Bloomington, and

Decatur, and run eastward into Danville.[56] It is a standard gauge road and its freight equipment is interchangeable with any road using standard equipment. It is subject to the jurisdiction of the Interstate Commerce Commission.

The Railroad Company also owns a dock and barge loading plant at Alton, Illinois, used primarily for the loading of barges for the Mississippi coal and coke traffic. In addition, it runs passenger busses between East St. Louis and Granite City, Illinois, and owns a toll and railroad bridge (the McKinley Bridge) across the Mississippi River. As of December 31, 1940, the total book value of all its fixed assets was $51,728,769.

The arguments made for retention of the Railroad Company's properties are (1) that prior to 1923 certain electric and railroad facilities in Illinois Iowa's service area were jointly owned; (2) that the Railroad Company is the largest customer of Illinois Iowa; (3) that much equipment owned by Illinois Iowa is primarily devoted to serving the road and that telephone facilities owned by the road are also used by Illinois Iowa; (4) that certain joint facilities are cared for by joint personnel; (5) that economies result from common ownership; and (6) that it is difficult to sell the railroad properties. No argument for retention of the Terminal Company is made save that it should "obviously" be under common control with the railroad.

We have discussed at some length the criteria which we think are relevant to the question whether various interests

[56] The properties of this company also include an electric railway line between St. Louis and Alton, formerly owned by St. Louis & Alton Railway Company (a wholly-owned subsidiary of Union Electric Company of Missouri) and leased to Illinois Terminal. On December 31, 1940, St. Louis & Alton Railway sold these properties to Illinois Terminal and on April 18, 1941, St. Louis & Alton was dissolved.

may be retained under the "other business" clauses of Section 11(b)(1) (see pp. — · —, *supra*), and have already disposed of contentions identical with those made here. A showing of historical relationship between the railroad and the electric facilities of Illinois Iowa, the fact that the railroad is its largest customer, and the alleged difficulty of disposing of the railroad properties have no bearing on this question. The use of certain joint facilities and the economies resulting from common ownership do have some pertinency but, after careful analysis of the evidence and arguments presented, we cannot find that the relationship of the Railroad and Terminal properties to the operations of the retainable utility systems of Illinois Traction is such as to warrant retention of these railroad and real estate properties under the control of a registered public utility holding company.

We have consisted the applicability of the "other business" clauses of Section 11(b)(1) to a railroad business controlled by the Union group and, under facts showing a very close relationship between the railroad business and the utility system, we concluded that the railroad business could be retained. (See pp. ——, *supra.*) There are no comparable facts here. We cannot find under Section 11(b)(1) that the Railroad and Terminal companies' businesses are reasonably incidental, or economically necessary or appropriate to the operations of any integrated public utility system retainable by Illinois Traction. Accordingly, we must order Illinois Traction and Illinois Iowa to divest themselves of these interests.

(g) *Dormant companies*—Certain direct subsidiaries of Illinois Iowa, which have no tangible assets and do no business, have been kept in existence for the purpose of preserving franchises in areas in which Illinois Iowa conducts its

gas business,[57] or because unsettled claims against them are outstanding.[58] One of these companies, the Venice Gas Company, has assigned its franchise to Illinois Iowa and that company now operates under the franchise.

It has been stated that these companies will be "dissolved as soon as circumstances permit." The ownership of franchises in the area served by Illinois Iowa appears to be closely related to the gas operations of the system and since we have determined to reserve decision with respect to the
497 gas operations, we shall also reserve judgment as to these companies. As to St. Louis Electric Terminal Railway Company, since it does no business whatsoever, and since it is merely being kept alive in connection with the settlement of outstanding claims, we must require that it be separated from the Illinois Traction system by dissolution or otherwise.

3. *"Other Businesses" of Des Moines Electric Light Company*—The only non-utility business engaged in by Des Moines and its subsidiary, Iowa Power and Light, is a heating business. The evidence with respect to this business deals only with its relationship to the utility operations of
498 Des Moines and Iowa Power and Light. Since we have concluded that these utility operations must be disposed of, we cannot find, under Section 11(b)(1), that this heating business is reasonably incidental, or economically necessary or appropriate to the operations of any retainable utility system of Illinois Traction Company.

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[57]These companies are Cairo City Gas Company, Champaign and Urbana Gas Light and Coke Company, Decatur Electric Company, Danville Gas Light Company, The Jacksonville Gas Light & Coke Company, Jacksonville Railway and Light Company.

[58]These companies are St. Louis Electric Terminal Railway Company and Venice Gas Company.

499

Conclusions with Respect to the Illinois Traction System—In accordance with the foregoing, Illinois Traction Company and Illinois Iowa Power Company will be ordered to divest themselves of all holdings, direct and indirect, of the securities of Des Moines Electric Light Company and Iowa Power and Light Company. Illinois Traction will also be required to divest itself of all of its holdings of securities of Western Illinois Ice Company; and Illinois Traction and Illinois Iowa will be directed to dispose of the water, ice, oil drilling, and transportation business of Illinois Iowa, the railroad, terminal, and real estate businesses of Illinois Iowa's subsidiaries, Illinois Terminal Railroad Company and Central Terminal Company, and the securities of St. Louis Electric Terminal Railway Company.

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As we have indicated, Illinois Traction and Illinois Iowa will be afforded a further opportunity to present argument, should they so desire, on the appropriateness of the choice of the electric operations of Illinois Iowa and Kewanee as their "principal system"; and our order, insofar as it requires divestment by Illinois Traction and Illinois Iowa, will be subject to modification if, after presentation of further argument or evidence in this respect, such modification appears necessary. We shall order a further hearing on the question whether the gas properties of Illinois Iowa, Kewanee and Cahokia (and the dormant companies kept alive for franchise reasons) may be retained in combination with the retainable electric properties.

501

VII. The Holding Company System of Illinois Iowa Power Company

Illinois Iowa is not only an operating company and a subsidiary of Illinois Traction, but is itself a registered

holding company heading a large system. However, all of the problems which arise in the application of the standards of Section 11(b)(1) to Illinois Iowa's holding company system have already been discussed and disposed of in connection with our discussion of the Illinois Traction system.

Subject to any further argument which may be requested as to the appropriateness of the choice of its "principal system," we have held that Illinois Iowa may retain its directly owned electric and steam heating properties. Our order will require the divestment of its water, ice, oil drilling, and
503 transportation businesses and the divestment of its holdings, direct and indirect, of the securities of Des Moines Electric Light Company, Iowa Power and Light Company, Illinois Terminal Railroad Company, Central Terminal Company, and St. Louis Electric Terminal Railway Company. We are reserving our decision with respect to the retainability of the gas properties of Illinois Iowa, Kewanee and Cahokia and the dormant companies kept alive for franchise reasons.

VIII. The Holding Company System of Des Moines Electric Light Company

504

Des Moines, a subsidiary of Illinois Iowa Power Company, is itself a registered holding company and a respondent in this proceeding. Des Moines is a Maine corporation organized in 1909. Its properties and those of its wholly-owned subsidiary, Iowa Power and Light Company, are located entirely in Iowa.

The territory served with electricity by Des Moines and Iowa Power and Light contains about 3,240 square miles. It is a solid area running 102 miles east to west, and 52 miles north to south. It has a total population of about 290,000. The companies serve 101 communities and inter-

vening rural areas, 99 with electricity, 8 with gas, and 1 with steam heat. The property devoted to the electric business represents 75.7% of the total of the properties of both companies; 23.6% of the properties are devoted to the gas and .7% to the heating businesses. Both companies own production, transmission, and distribution units.

A. *The Principal and Additional Systems of Des Moines* —Both companies own generating facilities (steam and hydro) which are interconnected and are also connected with the companies' transmission and distribution facilities. 506 These operations of both companies are conducted as a unit and, accordingly, we find that their electric operations constitute those of a single integrated electric utility system. The only question with respect to the retention of additional systems arises in connection with the gas business of the companies. Both Des Moines and Iowa Power and Light serve a total of eight communities with natural and manufactured gas. In 1940, 39,900 gas customers were served with 12,900,000 therms of gas. These operations accounted for 24% of the total operating revenues of the two companies. 93% of the gas customers of both companies reside in Des 507 Moines.[59]

We find that the gas operations of Des Moines and Iowa Power and Light constitute those of a single integrated gas utility system. However, for reasons similar to those mentioned in our discussion of the retainability of the gas operations of the Union group and those of Illinois Iowa,

[59]For the year ending December 31, 1940, total operating revenues for both companies from all sources were $7,086,710; $5,357,563 of this amount is accounted for by the electric business and $1,697,158 by the gas business. The book value of the companies' assets as of December 31, 1940, was $39,846,543, 23.6% of which was devoted to the gas business.

Kewanee and Cahokia (see pp. , *supra*), we will not at this time pass upon the question whether the gas operations of Des Moines and Iowa Power and Light may be retained as a system additional to their integrated electric system. The record will be reopened for the introduction of further evidence bearing on that question.

B. *The "Other Businesses" Retainable by Des Moines*—The only non-utility business engaged in by Des Moines and Iowa Power and Light is the rendition of heating service in
509 Oskaloosa, Iowa. In 1940 this business accounted for $31,989 of revenue. Boilers used for heating service are located in a station which is used also as a point of connection between the main electric transmission system of the company and the Oskaloosa distribution system. Personnel used in the station operate both the electric and steam services. We find that this heating business is reasonably incidental, or economically necessary or appropriate to the operations of the retainable utility systems of Des Moines.

Conclusions with Respect to Des Moines—Subject to the further hearing with respect to the retainability of the gas
510 operations, it will be unnecessary for Des Moines or Iowa Power and Light to take any action to comply with the requirements of Section 11(b)(1) of the Act.

Summary of Conclusions and Nature of Order

This summary of conclusions will indicate those interests and businesses, directly or indirectly held, controlled or operated, which must be disposed of by the various registered public utility holding companies in the North American system in order to comply with Section 11(b)(1) in accordance with our findings and opinion.

Each of the registered holding companies in the system will be ordered to sever its relationship with the companies set forth below its name by disposing, or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the Act or the rules and regulations promulgated thereunder, of its direct or indirect ownership, control, or holding of securities issued and properties owned, controlled or operated by the said companies:

I. *The North American Company*

512

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company
Wisconsin Electric Power Company
The Milwaukee Electric Railway & Transport Company
Motor Transport Company
Badger Auto Service Company
Wisconsin Gas & Electric Company
Wisconsin-Michigan Power Company
Milwaukee Light, Heat & Traction Company 513
Hevi-Duty Electric Company
The Cleveland Electric Illuminating Company
The Power & Light Building Company
The Ceico Company
North American Light & Power Company
The Kansas Power and Light Company
Missouri Power & Light Company
The Blue River Power Company
The McPherson Oil and Gas Development Company
Power & Light Securities Company
North American Oil and Gas Company

Northern Natural Gas Company
Argus Natural Gas Company, Inc.
Peoples Natural Gas Company
Illinois Traction Company
Kewanee Public Service Company
Cahokia Manufacturers Gas Company
Western Illinois Ice Company
Illinois Iowa Power Company
Des Moines Electric Light Company
515 Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
Cairo City Gas Company
Champaign and Urbana Gas Light and Coke Company
Danville Gas Light Company
Decatur Electric Company
The Jacksonville Gas Light & Coke Company
Jacksonville Railway and Light Company
St. Louis Electric Terminal Railway Company
Venice Gas Company
516 Washington Railway and Electric Company
Potomac Electric Power Company
Great Falls Power Company
The Washington and Rockville Railway Company of Montgomery County
Braddock Light & Power Company, Incorporated
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company
West Kentucky Coal Company (New Jersey)
West Kentucky Coal Company (Delaware)
Peoples Coal Company

517

St. Bernard Coal Company
North American Utility Securities Corporation
Pacific Gas and Electric Company and its subsidiaries
The Detroit Edison Company and its subsidiaries.

The operations of the North American system will thus be limited to the electric, gas (pending further action), and steam heating operations of the Union group, the coal business of Union Colliery Company, the transportation business of St. Louis & Belleville Electric Railway Company, and the building owned by 60 Broadway Building Corporation. 518
Further hearings will be held with respect to the retainability of the gas operations of the Union group and St. Louis County Gas Company, and with respect to the retainability of 60 Broadway Building Corporation.

North American will be afforded further opportunity to present additional argument or evidence, if it so desires, with respect to the choice of its principal system.

II. *Union Electric Company of Missouri*

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company 519
East St. Louis Railway Company.

The operations of the Union Electric system will thus be limited to the electric, gas (pending further action), and steam heating operations of the Union group, the coal business of Union Colliery Company, and the transportation business of St. Louis & Belleville Electric Railway Company. Further hearings will be held with respect to the retainability of the gas operations of the Union group and St. Louis County Gas Company.

520

III. *Washington Railway and Electric Company*

Great Falls Power Company
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company.

The operations of the Washington Railway and Electric Company system will be limited to the electric utility operations of Potomac Electric Power Company and Braddock
521 Light & Power Company, Incorporated.

IV. *The Washington and Rockville Railway Company of Montgomery County*

Great Falls Power Company.

The operations of the Washington and Rockville system will thus be limited to the electric utility operations of Braddock Light & Power Company, Incorporated.

V. *Northern Natural Gas Company*

522 Argus Natural Gas Company.

The operations of the Northern Natural Gas system will thus be limited to the gas operations of Peoples Natural Gas Company, and the gas production and transmission facilities of Northern Natural Gas Company.

Northern Natural Gas Company will be afforded the further opportunity to present argument as to whether it wishes to retain the Argus system rather than Peoples as its principal system.

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VI. *Illinois Traction Company*

Western Illinois Ice Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
St. Louis Electric Terminal Railway Company.

Illinois Traction Company and Illinois Iowa Power Company will also be ordered to divest themselves of any interest, direct or indirect, in the water, ice, oil drilling and transportation businesses now engaged in by Illinois Iowa Power Company.

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The operations of the Illinois Traction system will thus be limited to the electric and gas operations of Illinois Iowa Power Company and Kewanee Public Service Company, the gas operations of Cahokia Manufacturers Gas Company, and the steam heating business of Illinois Iowa Power Company. Further hearings will be held with respect to the retention of the gas operations.

Illinois Traction Company will be afforded a further opportunity to present evidence and argument on the question whether any single integrated utility system other than the major integrated electric utility system of Illinois Iowa Power Company and Kewanee Public Service Company shall serve as its principal system.

525

VII. *Illinois Iowa Power Company*

Des Moines Electric Company
Iowa Power and Light Company
Illinois Terminal Railroad Company

Illinois Iowa Power Company will also be ordered to divest itself of any interest held, directly or indirectly, in any non-utility business except the steam heating business which it now operates.

The operations of the Illinois Iowa Power Company system will thus be limited to its own electric, gas (pending further action), and steam heating businesses. Further hear-
527 ings will be held with respect to the retainability of the gas business.

Illinois Iowa Power Company will be afforded a further opportunity to present evidence and argument on the question whether any single integrated utility system now controlled by it other than the major electric utility system designated as its principal system in this opinion shall serve as its principal system.

VIII. *Des Moines Electric Light Company,* as a registered holding company, need take no action at this time to comply
528 with the requirements of Section 11(b)(1). Further hearings will be held with respect to the retention of the gas operations of Des Moines and Iowa Power and Light.

Our order will provide that its entry, publication and service shall be without prejudice to the right of the Commission, and that jurisdiction shall be reserved, to issue such other and further orders as may be necessary or advisable for securing compliance with the provisions of the Act and the rules and regulations thereunder, and in carrying out the provisions of the order. Our order will further provide that it shall in no way affect the conduct of such proceedings and the entry of such orders as the Commission shall deem

necessary and appropriate under Section 11(b)(2) of the Act.

* * *

At various points in this opinion and in connection with our discussion of the retention of various interests, we have adverted to respondents' claims of alleged difficulties in disposing of such interests. We have stated, and we again emphasize the fact, that, under the standards of the Act, difficulties of disposition have no bearing at all on whether any particular interest is retainable; and that such difficul- 530
ties are pertinent only to the question *when* compliance with our order of divestment should be enforced. Consequently, respondents' references to adverse market conditions for the sale of securities have no relevancy whatever *at this time*. The statute provides a year within which respondents may comply with our order. Furthermore, on an appropriate showing (which would certainly include a showing that bona fide attempts to dispose of properties had been prevented by adverse market conditions), we may grant an additional year for compliance. And even at that time our orders under Section 11(b)(1) are not self-enforcing. For under the Act 531
compulsory compliance can occur only after the Commission makes application to a court.

It is appropriate also to point out once again that compliance with our Section 11(b)(1) orders need not always be effected by the outright sale of properties for cash. It seems clear that a very large part of the divestments and dispositions necessary to comply with Section 11(b)(1) and our orders thereunder may be effectuated by stock dividends, by exchanges of portfolio securities with the security holders of the holding company, and through the exchange of prop-

532 *Findings and Opinion of the Commission*

erties between systems. It may be that these methods in practice will overshadow sales.

By the Commission (Chairman Purcell, Commissioners Healy, Pike, and Burke), Commissioner O'Brien not participating.

FRANCIS P. BRASSOR

Francis P. Brassor,
Secretary.

533

Per:
ORVAL L. DU BOIS

(SEAL)

534

APPENDIX A

The following tabulation shows the place and date of organization and the nature of the business of each of the Companies in The North American Company System:

As of December 31, 1940.

Name of Company	*State of Organization and Date Thereof*		*Kind of Business*
The North American Company	N. J.	June 1890	Holding Company
Union Electric Company of Mo.	Mo.	Nov. 1922	Electric utility and heating company: also holding company 536
Union Electric Co. of Ill.	Ill.	July 1908	Electric and gas utility company
Union Colliery Company	Mo.	July 1917	Coal company
Mississippi River Power Co.	Mo.	Aug. 1910	Electric utility company
Iowa Union Electric Co.	Ill.	Dec. 1911	Electric and gas utility company
Cupples Station Light, Heat and Power Company	Mo.	Nov. 1896	Inactive
Union Electric Land and Development Company	Mo.	July 1929	Land company
St. Louis & Belleville Electric Railway Company	Ill.	July 1897	Electric railway company
St. Louis & Alton Railway Co.	Ill.	June 1926	None—inactive 537
East St. Louis & Suburban Railway Company	Ill.	Dec. 1893	None—inactive
East St. Louis Railway Co.	Ill.	May 1902	None—inactive
The St. Louis County Gas Co.	Mo.	Mar. 1912	Gas utility company
Wisconsin Electric Power Co.	Wis.	Jan. 1896	Electric utility and heating company
The Milwaukee Electric Railway & Transport Company	Wis.	Oct. 1938	Transportation company
Motor Transport Company	Wis.	Mar. 1919	Freight transportation company
Badger Auto Service Co.	Wis.	Jan. 1923	Parking stations and gasoline filling stations

Name of Company	*State of Organization and Date Thereof*		*Kind of Business*
Wisconsin Gas & Electric Co.	Wis.	June 1866	Electric and gas utility, heating and transportation company
Wisconsin Michigan Power Co.	Wis.	May 1911	Electric and gas utility and transportation company
Milwaukee Light, Heat & Traction Company	Wis.	Dec. 1896	Land company
Hevi-Duty Electric Company	Wis.	Nov. 1924	Electric furnace construction
539			
The Cleveland Electric Illuminating Company	Ohio	Sept. 1892	Electric utility and heating company
The Power & Light Bldg. Co.	Ohio	Mar. 1911	Real estate company
The Ceico Company	Ohio	Mar. 1929	Land and metering company
North American Light & Power Company	Del.	June 1924	Holding Company
The Kansas Power and Light Co.	Kan.	Mar. 1924	Electric and gas utility, heating, water, ice and transportation company
540 Missouri Power & Light Co.	Mo.	Dec. 1911	Electric and gas utility, heating, water and ice company
The Blue River Power Company	Del.	Oct. 1928	Electric utility company
Nebraska Natural Gas Co.	Neb.	May 1929	Gas utility company
The McPherson Oil & Gas Development Company	Kan.	May 1927	Gas production company
Power & Light Securities Co.	Del.	May 1928	Miscellaneous investments
North American Oil and Gas Co.	Del.	May 1930	None—inactive
Illinois Traction Company	Me.	May 1904	Holding company
Kewanee Public Service Co.	Ill.	Feb. 1924	Electric and gas utility company

Name of Company	*State of Organization and Date Thereof*		*Kind of Business*
Cahokia Manufacturers Gas Co.	Ill.	Jan. 1855	Owns gas distribution facilities leased to Illinois Iowa Power Co.
Western Illinois Ice Co.	Ill.	Apr. 1927	Ice company
Illinois Iowa Power Company	Ill.	May 1923	Electric and gas utility, heating, water, ice and transportation company; also holding company 542
Des Moines Electric Light Co.	Me.	July 1909	Electric and Gas utility and heating company; also holding company
Iowa Power and Light Co.	Ia.	Oct. 1924	Electric and gas utility company
Illinois Terminal Railroad Company	Ill.	Oct. 1927	Railroad company
Central Terminal Co.	Mo.	Mar. 1929	Warehouse company
Chicago and Illinois Valley Railroad Co.	Ill.	Sept. 1928	None—inactive
Cairo City Gas Company	Ill.	Feb. 1865	None—inactive
Champaign and Urbana Gas Light and Coke Company 543	Ill.	Feb. 1867	None—inactive
Danville Gas Light Company	Ill.	Feb. 1867	None—inactive
Decatur Electric Company	Ill.	Mar. 1887	None—inactive
The Jacksonville Gas Light & Coke Company	Ill.	Feb. 1855	None—inactive
Jacksonville Railway and Light Company	Me.	Nov. 1905	None—inactive
St. Louis Electric Terminal Railway Company	Mo.	Mar. 1906	None—inactive
Venice Gas Company	Ill.	Dec. 1924	None—inactive
Northern Natural Gas Company	Del.	Apr. 1930	Gas pipe line company; also holding company

Name of Company	*State of Organization and Date Thereof*		*Kind of Business*
Argus Natural Gas Co., Inc.	Kan.	May 1930	Gas utility company
Peoples Natural Gas Co.	Del.	May 1930	Gas utility company
Washington Railway and Electric Company	Act of Congress	July 1892	Holding company
Potomac Electric Power Co.	D. C.	Apr. 1896	Eelectric utility company
Great Falls Power Co.	Va.	Mar. 1894	Land company
The Washington and Rockville Railway Co. of Montgomery Co.	Md.	Sept. 1897	Holding company
Braddock Light & Power Company, Inc.	Va.	Aug. 1909	Electric utility company
Capital Transit Company	D. C.	Sept. 1933	Transportation company
Montgomery Bus Lines, Inc.	Md.	Nov. 1927	Transportation company
The Glen Echo Park Co.	Md.	Apr. 1911	Amusement park
The Detroit Edison Company	N. Y.	Jan. 1905	Electric utility and holding company
The Edison Illuminating Co. of Detroit	Mich.	—	Holds title to non-utility assets
Huron Farms Company	Mich.	—	Land company
Essex County Light and Power Co.	Canada	—	Inactive
The Peninsular Electric Light Company	Mich.	—	Inactive
St. Clair Edison Company	Mich.	—	Inactive
The Washtenaw Light and Power Company	Mich.	—	Inactive
Pacific Gas and Electric Co.	Calif.	—	Electric utility and holding company
Valley Electric Supply Co.	Calif.	—	—
Arlington Properties Co. Ltd.	Calif.	—	—
Vallejo Electric Light and Power Company	Calif.	—	—
San Joaquin Light and Power Corporation	Calif.	—	Inactive
Standard Pacific Gas Line Inc.	Del.	—	Inactive

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Name of Company	*State of Organization and Date Thereof*		*Kind of Business*
ther Non-Utility Subsidiary Companies of the Registrant			
est Kentucky Coal Company	N. J.	June 1905	Coal company
West Kentucky Coal Company	Del.	Nov. 1924	Coal sales company
Peoples Coal Company	Neb.	Apr. 1916	Coal sales company
St. Bernard Coal Company	N. J.	May 1924	Coal sales company
Broadway Building Corporation	N. Y.	Oct. 1924	Real estate company
orth American Utility Securities Corporation	Md.	Dec. 1924	Investment company

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APPENDIX B

Name of Company	*Electric Service Area Square Miles*	*Number of Customers Served*	*Population of Area*
Potomac Electric Power Company	628	200,777	826,000
Braddock Light and Power Company	3	1,866	
Cleveland Electric Illuminating Company	1,700	333,833	1,400,000
Wisconsin Electric Power Company Wisconsin Gas & Electric Company	4,029	252,741 66,472	1,209,600
Wisconsin Michigan Power Company	8,289	38,719	169,900
Union Electric Company of Missouri (and Subsidiaries)	3,100	351,483	1,500,000
The Kansas Power and Light Company	21,500	83,513	244,400
Missouri Power & Light Company	10,900	42,264	144,000
Des Moines Electric Light Company Iowa Power and Light Company	3,240	56,107 9,848	290,000
Illinois Iowa Power Company	15,233	217,571	750,000
Kewanee Public Service Company	100	5,817	
The Detroit Edison Company	7,587(a)	697,767(b)	2,580,000(c)
Pacific Gas and Electric Company (and Subsidiaries)	89,000(a)	759,887(d)	3,000,000(a)
System Total	165,309	3,117,666	12,113,900

Notes:

(a) From Moody's Public Utility Manual (1940)
(b) Item 7, Registration Statement, 2-4600-1
(c) Item 4, Registration Statement, 2-4600-1
(d) Item 7, Registration Statement, 2-1324-1

APPENDIX C

THE NORTH AMERICAN COMPANY AND SUBSIDIARY COMPANIES

CONSOLIDATED INCOME STATEMENT, YEAR ENDED DECEMBER 31, 1940

Operating Revenues:		
Electric	$100,291,261.89	
Heating	3,578,093.72	
Gas	10,471,850.28	
Transportation	9,724,067.76	554
Coal	4,380,855.35	
Miscellaneous	1,828,727.19	
Total Operating Revenues	$130,274,856.19	
Operating Expenses and Taxes:		
Operating Expenses	48,107,162.10	
Maintenance	7,928,137.72	
Taxes, other than Income Taxes	14,854,193.09	
Provision for Income Taxes	8,786,540.00	
Appropriations for Depreciation Reserves	17,041,248.80	
Total Operating Expenses and Taxes	$ 96,717,281.71	
Net Operating Revenues	$ 33,557,574.48	555
Non-Operating Revenues:		
Dividends:		
On Stocks of Washington Railway and Electric Company	2,661,850.90	
On Common Stock of Pacific Gas and Electric Company	4,119,340.00	
On Capital Stock of The Detroit Edison Company	1,472,778.00	
On Common Stock of Northern Natural Gas Company	994,700.00	
On Other Security Investments	186,806.86	

Interest	222,503.91
Net Profit on Merchandise Sales	113,733.73
Net Income from Rentals	50,000.85
Other Income	87,103.71
Total Non-Operating Revenues	$ 9,908,817.96
Gross Income	$ 43,466,392.44
Deductions:	
Interest on Funded Debt	13,725,944.15
Amortization of Discount and Expense on Funded Debt	1,202,601.11
557 Other Interest Charges	74,144.70
Total Interest Charges	$ 15,002,689.96
Less—Interest during Construction charged to Property and Plant	210,033.84
Net Interest Charges	$ 14,792,656.12
Preferred Dividends of Subsidiaries	5,433,164.14
Minority Interests in Net Income of Subsidiaries	1,674,072.49
Other Deductions	1,250,000.00
Total Deductions	$ 23,149,892.75
558 Balance for Dividends and Surplus	$ 20,316,499.69

Basis of Consolidation:

The policy of The North American Company is to include in its consolidated financial statements subsidiary companies in which it holds directly or through subsidiaries voting control and 75% or more of the Common Stock, and to exclude companies in which it does not have voting control although owning 75% of the Common Stock.

THE NORTH AMERICAN COMPANY AND SUBSIDIARIES

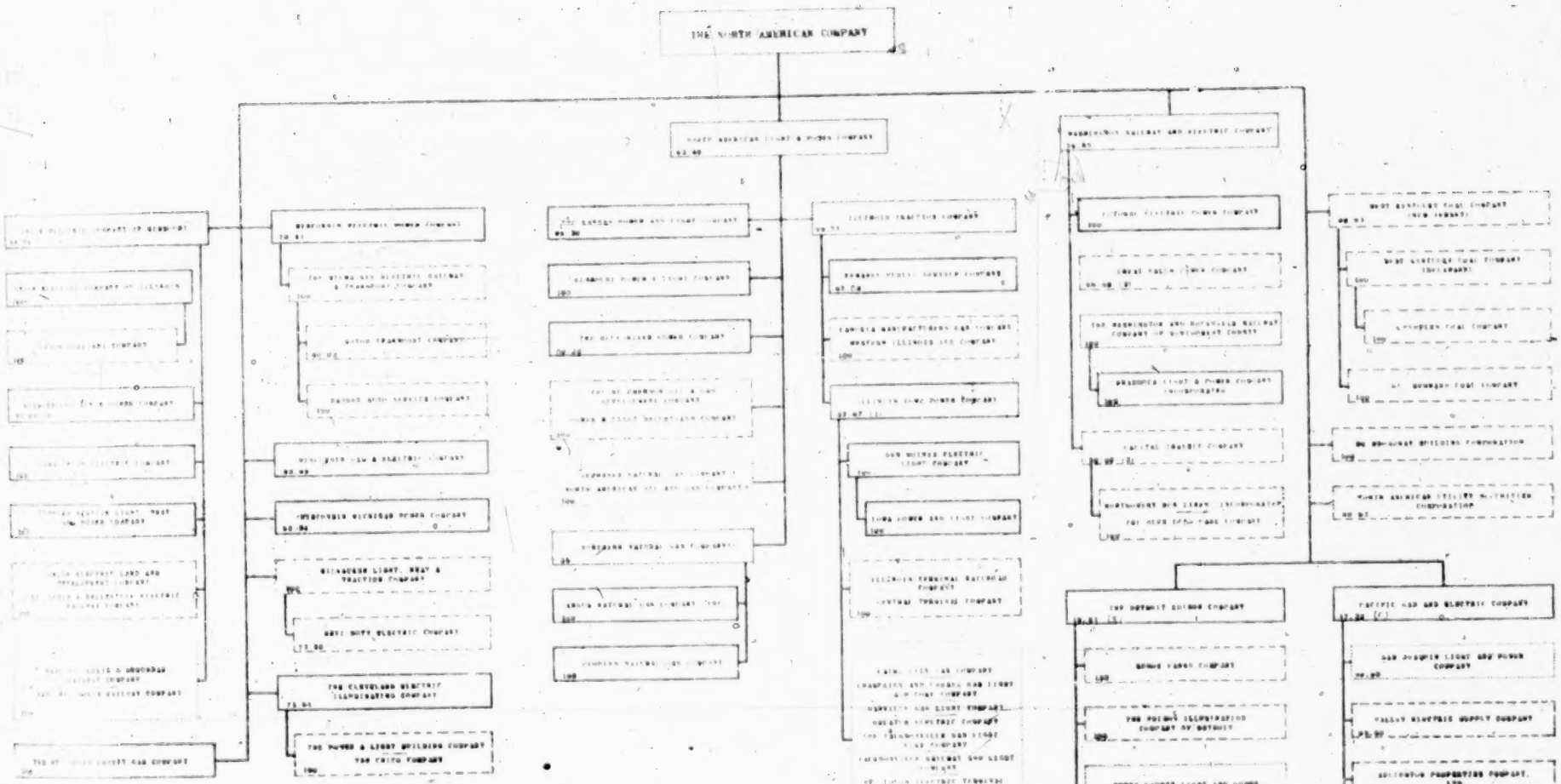
CONDENSED CONSOLIDATED BALANCE SHEET DECEMBER 31, 1940

ASSETS

Property and Plant		
Utility Subsidiaries	$683,880.153	
Other Subsidiaries	22,876,354	
	$706,756,507	
Cash and Securities on Deposit with Trustees	442,993	560
Investments		
Securities of Affiliates	$135,395,546	
Other Securities Investments	10,832,986	
	$146,228,532	
Current and Working Assets		
Cash	$ 47,193,448	
Investments (short term and U. S. Government Securities)	3,503,517	
Deposits by subsidiaries for payment of matured interest, etc.	4,653,566	
Accounts, Notes and Dividends receivable (less Reserve)	14,147,041	561
Materials and Supplies	11,052,272	
	$ 80,549,844	
Discount and Expense	$ 18,955,963	
Commission and Selling Expense	912,517	
Organization Expense of Subsidiaries	1,602,533	
Prepaid Accounts and Other Deferred Charges	1,614,788	
	$957,063,677	

LIABILITIES

Capital Stock of North American Company	
Serial Preferred	
6% Series	$ 30,317,950
5¾% Series	34,819,000
Common Stock	85,726,260
Preferred Stock of Subsidiaries	$107,786,812
Dividends in Arrears on Preferred Stocks of Subsidiaries	5,736,197
Minority Interests in Common Stock and Surplus of Subsidiaries	16,519,122
563 *Funded Debt of The North American Company*	
3½% Debentures, Series due 1949	$ 20,000,000
3¾% Debentures, Series due 1954	25,000,000
4% Debentures, Series due 1959	25,000,000
	$ 70,000,000
Funded Debt of Subsidiaries	$303,165,950
Current and Accrued Liabilities	$ 32,025,846
Contributions by Customers for Construction of Property	$ 1,968,135
Reserves	
For Depreciation and Retirement of Property and Plant	$146,085,757
564 For Contingencies	38,523,188
Other Reserves	8,473,631
	$193,082,576
Paid-in Surplus	312,994
Earned Surplus	75,602,835
	$957,063,677



APPENDIX D

EXPLANATORY NOTES

A light solid line enclosing a company name indicates that the company is a holding company; a heavy solid line indicates a utility company; a broken line indicates a non-utility company; and a dotted line indicates an inactive company or a company in process of dissolution.

The figures shown in the boxes represent percentage of total voting securities held by the immediate parent, including securities having voting rights because of default or arrears.

Minor subsidiaries are omitted.

(1) Utilities Power & Light Securities holds 1.07%, North American Light & Power Company 0.32%, and The North American Company 0.74% of the voting stock.

(2) In addition The Washington and Rockville Railway Company of Montgomery County holds 33.12% of the common stock.

(3) In addition The North American Company holds 1.20% of the common stock.

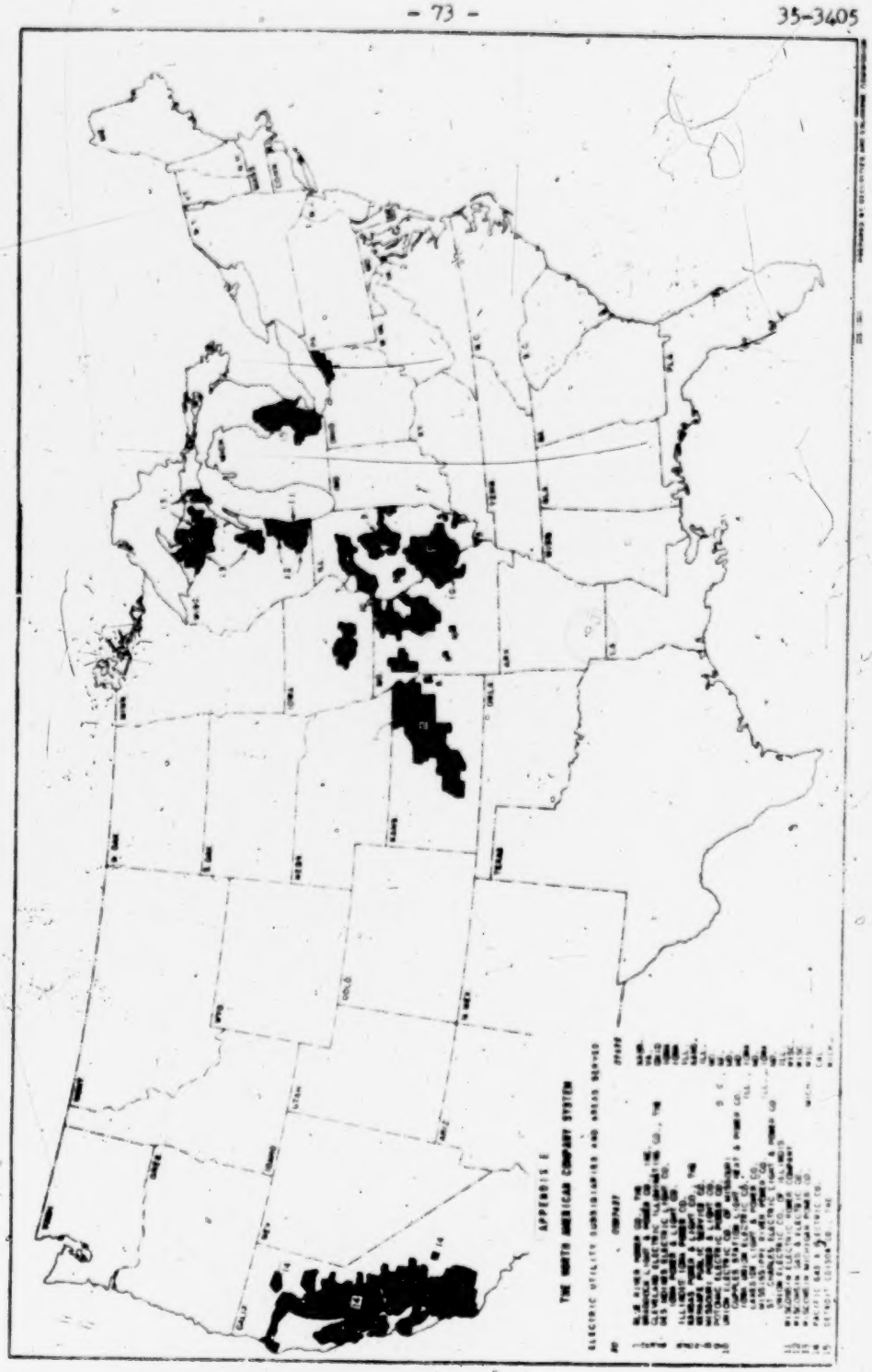
(4) In addition The North American Company holds 0.09% of the common stock.

(5) The North American Utilities Securities Corporation owns 50% of the voting stock.

(6) In addition North American Utilities Securities Corporation owns 5.49% of the voting stock.

(7) In process of dissolution.

(MAP)



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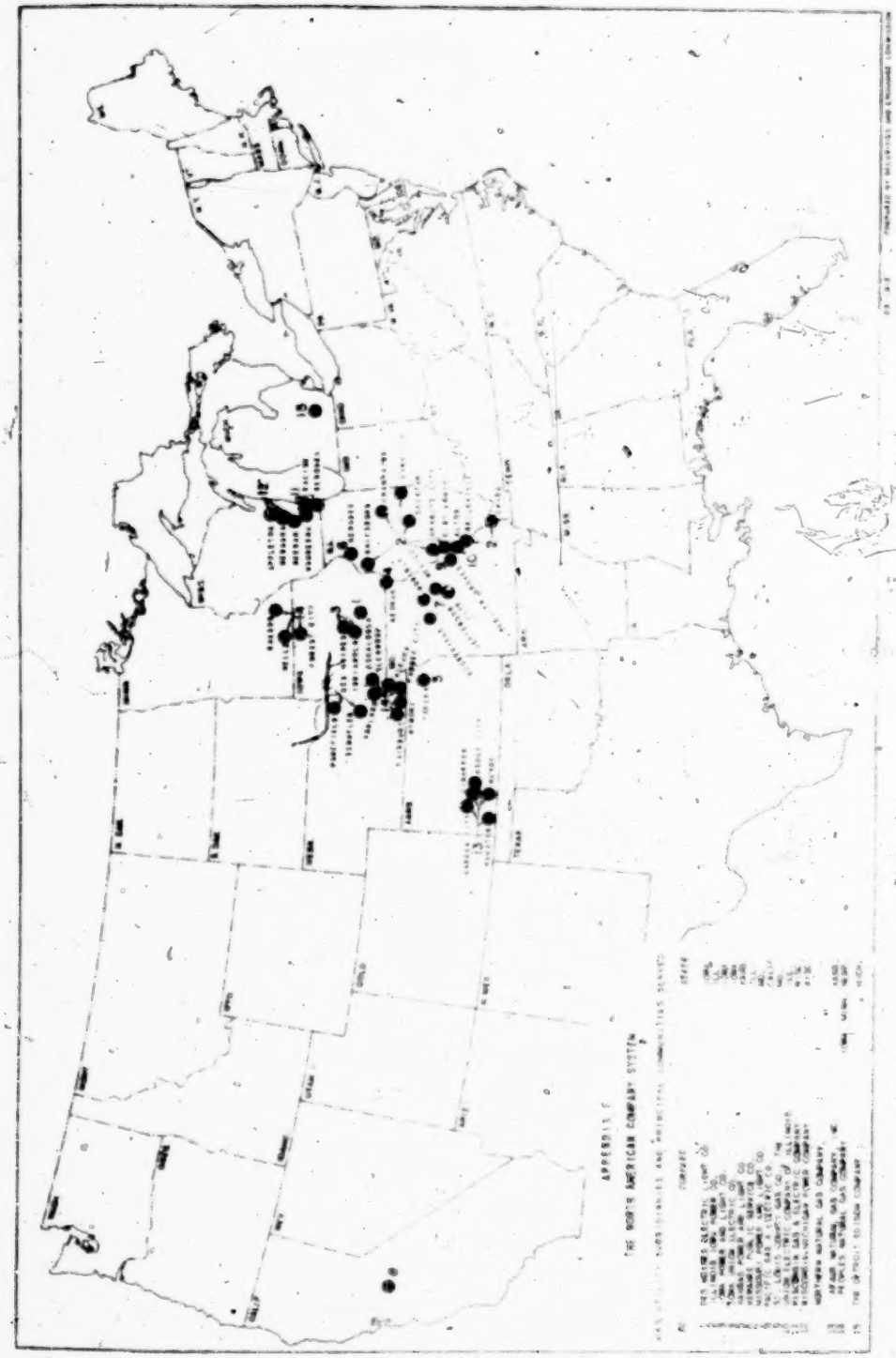

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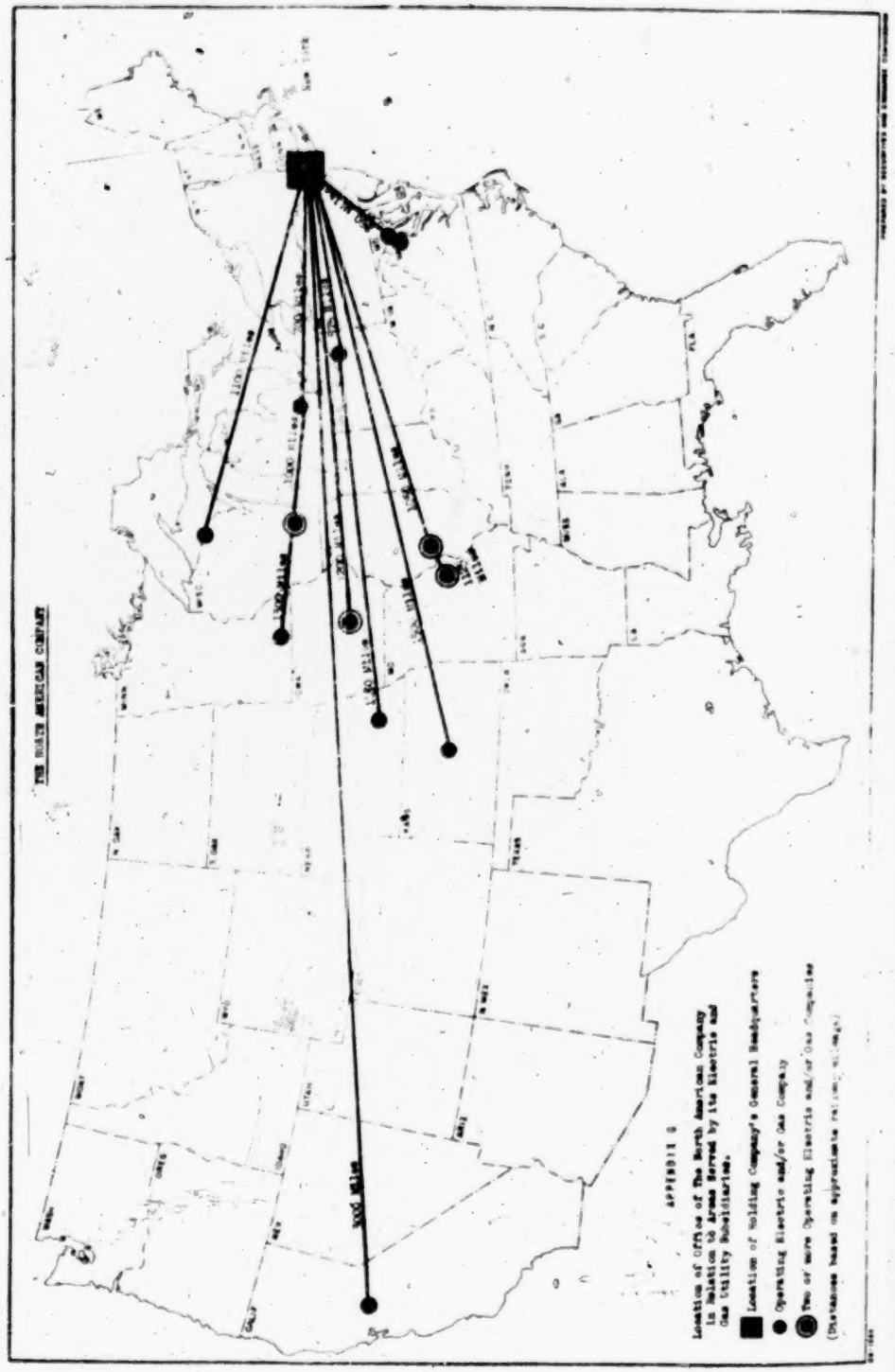
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35-3405
THE NORTH AMERICAN COMPANY
APPENDIX G
Location of Office of The North American Company
In Relation to Areas Served by Its Electric and
Gas Utility Subsidiaries.
Location of Holding Company's General Headquarters
Operating Electric and/or Gas Company
Two or more Operating Electric and/or Gas Companies
(Distances based on approximate railway mileage)

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

AT A REGULAR SESSION OF THE SECURITIES AND EXCHANGE COMMISSION, HELD AT ITS OFFICE IN THE CITY OF PHILADELPHIA, PA., ON THE 14TH DAY OF APRIL, A. D., 1942.

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and

ITS SUBSIDIARY COMPANIES

Respondents

File No. 59-10

Public Utility Holding Company Act
of 1935—Section 11 (b) (1)

ORDER REQUIRING DIVESTITURE BY HOLDING COMPANIES AND SUBSIDIARIES IN HOLDING COMPANY SYSTEM OF COMPANIES AND PROPERTIES OWNED OR OPERATED THEREBY

The Commission having on March 8, 1940, by notice and order for hearing, supplemented by a notice and order dated August 12, 1940, adding certain companies as respondents, instituted proceedings under Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 against The North American Company and its subsidiaries to determine their status under said section, and The North American Company

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and its subsidiaries having severally answered such notice and order; and

Hearings having been held after due notice, requests for findings of fact on behalf of such companies and briefs in support thereof having been filed, oral argument having been heard; and

The Commission being advised in the premises, and having this day issued its Findings and Opinion with respect to certain action which the Commission finds necessary to limit the operations of the holding company systems of The North American Company and its subsidiaries, including each subsidiary thereof which is a registered holding company and its subsidiaries, to a single integrated public utility system and additional systems and other businesses in accordance with the requirements of Section 11 (b) (1) of the Public Utility Holding Company Act of 1935;

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IT IS ORDERED, pursuant to Section 11 (b) (1):

1. That The North American Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

585

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company
Wisconsin Electric Power Company

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The Milwaukee Electric Railway & Transport Company
Motor Transport Company
Badger Auto Service Company
Wisconsin Gas & Electric Company
Wisconsin Michigan Power Company
Milwaukee Light, Heat & Traction Company
Hevi-Duty Electric Company
The Cleveland Electric Illuminating Company
The Power & Light Building Company

587

The Ceico Company
North American Light & Power Company
The Kansas Power and Light Company
Missouri Power & Light Company
The Blue River Power Company
The McPherson Oil & Gas Development Company
Power & Light Securities Company
North American Oil and Gas Company
Northern Natural Gas Company
Argus Natural Gas Company Inc.
Peoples Natural Gas Company

588

Illinois Traction Company
Kewanee Public Service Company
Cahokie Manufacturers Gas Company
Western Illinois Ice Company
Illinois Iowa Power Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
Cairo City Gas Company
Champaign and Urbana Gas Light and Coke Company

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Danville Gas Light Company
Decatur Electric Company
The Jacksonville Gas Light & Coke Company
Jacksonville Railway and Light Company
St. Louis Electric Terminal Railway Company
Venice Gas Company
Washington Railway and Electric Company
Potomac Electric Power Company
Great Falls Power Company
The Washington and Rockville Railway Company of Montgomery County

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Braddock Light & Power Company, Incorporated
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company
West Kentucky Coal Company (New Jersey)
West Kentucky Coal Company (Delaware)
Peoples Coal Company
St. Bernard Coal Company
North American Utility Securities Corporation
Pacific Gas and Electric Company and its subsidiaries
The Detroit Edison Company and its subsidiaries;

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2. That Union Electric Company of Missouri, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company;

3. That Washington Railway and Electric Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of
593 its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Great Falls Power Company
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company;

4. That Washington and Rockville Railway Company of Montgomery County, a registered public utility holding company, shall sever its relationship with the company named
594 hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by:

Great Falls Power Company;

5. That Northern Natural Gas Company, a registered public utility holding company, shall sever its relationship with the company named hereafter by disposing or causing

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the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by:

Argus Natural Gas Company;

6. That Illinois Traction Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

596

Western Illinois Ice Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
St. Louis Electric Terminal Railway Company;

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and that Illinois Traction Company shall cease to own facilities devoted to, or engage in or control, directly or indirectly, the operation of any water, ice, oil drilling and transportation business now conducted by Illinois Iowa Power Company;

7. That Illinois Iowa Power Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing, or causing the disposition, in any appropriate manner not in contravention

of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
599 St. Louis Electric Terminal Railway Company;

and that Illinois Iowa Power Company shall cease to own or operate any property or facilities now owned or operated by it for the purpose of conducting, directly or indirectly, any water, ice, oil drilling and transportation business now conducted by it, and to cease engaging, directly or indirectly, in any water, ice, oil drilling and transportation business now engaged in by it; and

IT IS FURTHER ORDERED that the respondents, in accordance with Section 11(c) of the said Act, shall comply with
600 this order within one year from the date of its entry (without prejudice to their right to apply for additional time to comply with such order, as provided in such section).

Certain of the respondents in this proceeding which are registered public utility holding companies controlling or operating more than one single integrated public utility system, although heretofore afforded opportunity to indicate their choice of the single integrated system they desire to retain as their principal system, having failed to avail themselves of such opportunity, and the Commission desiring, nevertheless, that further opportunity be afforded such re-

spondents to indicate their views with respect to the choice of a principal system;

IT IS FURTHER ORDERED that notwithstanding the provisions of Rule XII(d) of the Commission's Rules of Practice, The North American Company, Northern Natural Gas Company, Illinois Traction Company, and Illinois Iowa Power Company may, within 15 days of the date hereof, petition for leave to present further argument and proffer additional evidence as follows:

602

1. The North American Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system, other than the integrated electric utility system of the Union group as described in our Findings and Opinion herein this day issued, shall serve as its principal system;

2. Northern Natural Gas Company may petition for opportunity to present further argument or additional evidence on the question whether the single integrated gas utility system operated by Argus Natural Gas Company, 603
rather than that operated by Peoples Natural Gas Company, shall serve as its principal system.

3. Illinois Traction Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system controlled or operated by any of its subsidiary companies, other than the major integrated electric utility system operated by Illinois Iowa Power Company, referred to in our Findings and Opinion herein this day issued, shall serve as its principal system.

4. Illinois Iowa Power Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system operated by it or any of its subsidiaries other than the major integrated electric utility system referred to in our Findings and Opinion herein this day issued, shall serve as its principal system.

Provided, however, that the Commission reserves the right to grant, deny or dispose of any such petition according
605 to the merits of the grounds urged in support thereof.

Issue having arisen in this proceeding as to the permissibility of retention of (a) the gas businesses conducted by Union Electric Company of Illinois, Iowa Union Electric Company, and St. Louis County Gas Company, in addition to the integrated electric utility system operated by Union Electric Company of Missouri and its subsidiaries; (b) the gas businesses conducted by Illinois Iowa Power Company, Kewanee Public Service Company, and Cahokia Manufacturers Gas Company, in addition to the electric operations of Illinois Iowa Power Company and Kewanee Public Service
606 Company; (c) the gas operations of Des Moines Electric Light Company and Iowa Power and Light Company, in addition to the electric operations of said companies; and (d) the securities of Cairo City Gas Company, Champaign and Urbana Gas Light and Coke Company, Danville Gas Light Company, Decatur Electric Company, The Jacksonville Gas Light & Coke Company, Jacksonville Railway and Light Company, and Venice Gas Company in the holding company systems of Illinois Traction Company and Illinois Iowa Power Company, and

The Commission deeming it necessary and appropriate that the record be reopened and that additional opportunity

be afforded for the presentation of further relevant evidence bearing on such questions;

IT IS ORDERED that, at such hour and place, and before such trial examiner and in such manner as the Commission shall by further notice and order designate, additional opportunity shall be afforded for the presentation of further relevant evidence bearing upon the question whether the gas businesses and securities referred to may be retained under clauses (A), (B), and (C) of Section 11(b)(1) of the Act as systems additional to the integrated electric utility systems of Union Electric Company of Missouri and its subsidiaries; Illinois Iowa Power Company and Kewanee Public Service Company; and Des Moines Electric Light Company and Iowa Power and Light Company, respectively. 608

Counsel for The North American Company having moved for a dismissal of this proceeding as to certain of its subsidiaries, named in our Order of March 8, 1940, commencing this proceeding, on the ground that they have been dissolved, or that The North American Company no longer has any interest in them, no objection having been made to this motion, and the Commission being of the opinion that the motion should be granted; 609

IT IS FURTHER ORDERED that this proceeding be, and the same hereby is, dismissed as to the following named respondents:

Washington and Glen Echo Railroad Company
St. Louis and East St. Louis Electric Railway Company
Wired Radio, Inc.
Wired Rediffusion Developments, Ltd.
St. Charles Electric Light and Power Company
Lakeside Light and Power Company

610 Wisconsin General Railway Company
Bloomington and Normal Railway, Electric and Heating Company
Decatur Light, Heat and Power Company
Elkhart Electric Light Company
Chicago and Electric Valley Railroad Company.

IT IS PROVIDED, with respect to our Findings, Opinion and Order herein, in their entirety, and with respect to the entry, publication, and service thereof, that they shall be without
611 prejudice to the right of the Commission to enter such other and further appropriate orders from time to time as the Commission may deem necessary to secure compliance by the respondents with the provisions of the Act and the pertinent rules and regulations thereunder in carrying out the provisions of this Order; and

IT IS FURTHER PROVIDED that jurisdiction is reserved to the Commission, notwithstanding this Order, or its entry, publication, and service, to conduct such investigations, hearings, or other proceedings involving any or all of the
612 respondents herein and to make such orders as it shall deem necessary or appropriate under Section 11(b)(2) or any other provision of the Public Utility Holding Company Act of 1935.

By the Commission.

FRANCIS P. BRASSOR
FRANCIS P. BRASSOR
Secretary

Per:
ORVAL L. DU BOIS

(SEAL)

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its 614

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

Public Utility Holding Company Act of 1935,
Section 11(b)(1)

PETITION OF RESPONDENT, THE NORTH AMERICAN COMPANY, FOR FURTHER ARGUMENT AND FOR LEAVE TO PROFFER ADDITIONAL EVIDENCE

In accordance with the Commission's order dated April 615
14, 1942 in this matter, The North American Company, a respondent herein, respectfully petitions for leave to present further argument, and to proffer additional evidence, with respect to the question whether any single integrated public utility system other than the integrated electric utility system of the group of companies designated in the above-mentioned order as the "Union Group", shall serve as this Respondent's principal system.

Further argument is requested for the following reasons:

(1) Section 11(b)(1) of the Act does not empower the Commission to enter an order designating a par-

616 ticular principal system for this Respondent, or compelling an election by this Respondent of a particular principal system prior to the expiration of the period within which the Commission's order of April 14, 1942 must be complied with.

(2) The sharp decline generally in the market value of securities and in the volume of trading therein, and particularly such decline with respect to public utility securities, since the record in this proceeding was closed, makes it imperative in the interest of investors in securi-
617 ties of this Respondent that this Respondent be given freedom of action, within the full period in which the Commission's order of April 14, 1942 must be complied with, to elect (as between the companies constituting the Union Group, The Cleveland Electric Illuminating Company and the group consisting of Wisconsin Electric Power Company and its subsidiaries) which of said systems is to constitute this Respondent's principal system. This is particularly true since it is impracticable now to determine which of the three large blocks of securities held by this Respondent in such companies may be most salable or best suited to exchange or other disposition at a future date. The Commission's order of April 14, 1942
618 should be reformed to permit such an election by this Respondent.

Leave is requested to proffer additional evidence with respect to the matters set forth in paragraph (2) above.

April 28, 1942.

SULLIVAN & CROMWELL,
Attorneys for Respondent
The North American Company,
48 Wall Street,
New York, N. Y.

SECURITIES AND EXCHANGE COMMISSION

PHILADELPHIA

IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES,

Respondents. 620

File No. 59-10

Public Utility Holding Company Act of 1935,
Section 11(b)(1)

OPINION ON PETITIONS FOR REHEARING AND REARGUMENT

On April 14, 1942, we issued an opinion and order in these proceedings directing The North American Company 621 and certain of its subsidiary companies to take various steps in order to comply with the provisions of Section 11(b)(1) of the Public Utility Holding Company Act of 1935.[1] There are now before us petitions for rehearing, for leave to present further evidence and argument, and to set aside our order of April 14, filed by The North American Company, by Illinois Iowa Power Company, and by Northern Natural Gas Company. The first two of these petitions were filed on

[1] *The North American Company and Its Subsidiary Companies*, 11 S. E. C. ——— (1942), Holding Company Act Release No. 3405.

April 29, and the third on May 8, 1942.[2] We shall consider each, in turn.

I. Petition of The North American Company

In the course of the proceedings leading up to our opinion and order of April 14, and to aid us in issuing findings with respect to the maximum limits of the holding company system (*i.e.*, the single system, the additional systems, and the other businesses) which can be retained under the control
623 of North American, we called upon North American to indicate to us which, if any, of the integrated utility systems under its control it desired to retain as its "single integrated system" (commonly referred to as the "principal system").[3] It may very well be that the ultimate responsibility for designating the principal system rests with us, but in making that designation we would certainly give considerable weight to the expressed desires of the respondent holding company. And whether the choice must be made by the Commission or can be made by the holding company, a principal system had to be designated before we could make findings with respect
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[2]The petition of Northern Natural Gas Company was supplemented, and in effect superseded, by an amended petition filed on May 27, 1942.

[3]In this and other proceedings the term "principal system" has been used to refer to the "single integrated public-utility system" mentioned in Section 11(b)(1). Under that section a registered holding company may retain the "single" system, such "additional" integrated systems as meet the standards of clauses (A), (B), and (C), and such "other businesses" as meet the standards of the section in relation to the retainable integrated utility systems. Because the "additional system" standards must be applied in relation to a "single" system and because the "other business" standards must be tested in relation to the retainable utility systems, the designation of at least the outlines of a "single" or "principal" integrated utility system is a necessary starting point.

to the "additional systems" and "other businesses" which might be retained by North American.[3a] We therefore made every effort to obtain from North American an expression of its views in this respect. North American insisted that it was not required to elect a principal system and it refused to make any such election or to indicate a definitive choice. North American's refusal in this respect was apparently based on its contention that it should be free to dispose of its non-retainable properties "as circumstances permit" without being "bound in advance to determine which system would be retained." We rejected that contention. Since at the time the record was closed it appeared clear that, if required to elect a principal system, North American would choose the electric utility properties of Union Electric Company of Missouri and its subsidiaries, and since we found that that choice was not inappropriate, we based our opinion and order upon the electric utility system of Union Electric and its subsidiaries as North American's principal system. However, our order outlined a procedure whereby North American was afforded a further opportunity to present additional argument or evidence, if it so desired, on the question whether any other integrated system under its control should serve as its principal system. Specifically, our order provided that, notwithstanding the provisions of Rule XII (d) of our Rules of Practice, North American might, within fifteen days of the date of the order, petition for leave to present further argument and evidence in this respect.

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On April 28, 1942, North American filed a petition which in its introductory recital purports to be in response to the above-mentioned provision of our order. The petition states

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[3a]North American specifically requested that we make such findings.

two specific reasons in support of the request for further argument. First, North American repeats its claim that, as a matter of law, no principal system need be designated prior to the expiration of the period within which our order of divestment must be complied with. Second, it urges that because of the state of the market for public utility securities, North American should be given freedom of action, "within the full period in which the Commission's order of April 14, 1942 must be complied with" to elect which of its three main systems (the Union group, The Cleveland Electric
629 Illuminating Company, and the group consisting of Wisconsin Electric Power Company and its subsidiaries) is to constitute its principal system. The petition also requests leave to offer additional evidence with respect to the second reason.

1. The petition, although it purports to have been filed in response to the opportunity afforded in our order of April 14 for further argument on the choice of a principal system, does not, in fact, relate to that question. In our order we provided specifically that, notwithstanding Rule XII (d) of our Rules of Practice,[4] within fifteen days of the order of
630 April 14, 1942,

> "The North American Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system, other than the integrated electric utility system of the Union group as described in our Findings and Opinion herein this day issued, shall serve as its principal system."

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[4]This rule requires that petitions for rehearing be filed within five days of the order complained of.

The precise language of the order and the discussion in our opinion[5] make it plain that we were affording North American still one further opportunity within a fifteen-day period after the issuance of our opinion and order to state its choice of a principal system. It is clear, however, that North American's petition is not directed to that question but is, in effect, an attempt to reargue its claim that it need not make any choice.[6]

2. Since the petition is not a request for further argument in response to the specific provisions of our order of 632
April 14, 1942, it must be regarded as a general petition for rehearing and reargument. As such, it has not been filed in accordance with our Rules of Practice, which provide that:

> "Any petition for rehearing by the Commission shall be filed within five days after issuance of the order complained of and shall clearly state the specific grounds and the specific matters upon which rehearing is sought" (Rule XII (d)).

However, were we convinced that sufficient merit appeared in the petition, we would not hesitate to grant it in 633

[5]See Holding Company Act Release No. 3405, at pp. 11-13.

[6]Parenthetically, we may note that the position now taken by North American in its petition is somewhat inconsistent with the position taken by it in oral argument before us. Its counsel there insisted, as he does now, that North American is not required to choose a principal system. But he insisted on North American's right to make such a choice "as soon" as called upon to do so, and he stated further, "If the Commission tells me that we must, we will do it immediately." Our order of April 14, 1942, was, in effect, an accommodation designed to permit North American to indicate its position as it said it would "do . . . immediately" or "as soon" as called upon. North American now attempts to use this machinery to argue again that it need not make any election.

spite of the failure to comply with Rule XII (d). Our determination to deny is not based upon the petition's nonconformance with our Rules of Practice, but upon the simple fact that, as an independent petition, it merely seeks to have reargued a contention made, argued, fully considered, and disposed of, in the original proceedings. The request to have the record reopened to take evidence on the state of the market is apparently made on the theory that such evidence may in some way buttress this contention. But, in our view, particularly in light of the comments hereinafter made, evi-
635 dence of the state of the market has no bearing on the question.

3. No useful purpose would be served by further argument or a modification of our order upon the basis thereof. North American's claim is that it should be free, within the period in which our order must be complied with, to dispose of any of its three major systems as the market will permit. This position ignores the possibility of the other methods of divestment indicated in our original opinion. However, even if we were to assume that sales in the market were the
636 only available method, our order does not foreclose the possibility of any such sales as North American may wish to make in correlation with the market. Pursuant to our order, North American is required to dispose of the Cleveland and Wisconsin-Michigan companies, and nothing in our order forbids North American from disposing of the Union group at any time. If North American should desire to dispose of Union Electric, it will, of course, be free to seek our approval under the appropriate statutory provisions. Section 11(b) provides, in express terms, that the Commission "may by order revoke or modify any order previously made" under

Section 11(b) "if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist." If North American can show that, by reason of subsequent events, including the disposition of Union Electric, "the conditions upon which the order was predicated do not exist," we have ample power to modify our order.

Thus, as matters now stand, if there is a showing of changed circumstances, we will have an opportunity to pass upon the propriety of any proposed modification of the plan 638
of integration which we have ordered. Under the type of order for which North American contends, the Commission would be giving its imprimatur to the propriety of any one of three alternative plans of compliance without knowing which, if any, of these plans will, in fact, be carried out. We find no reason or warrant in this case for adopting any such procedure.

North American's petition must, therefore, be denied.

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(Portions of the opinion relating to petitions by Illinois Iowa Power Company and Northern Natural Gas Company 639
have been intentionally omitted.)

An appropriate order will issue.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, Burke, and O'Brien).

ORVAL L. DUBOIS,

Orval L. Dubois,

(SEAL) Secretary.

640 *Order Disposing of Petitions for Rehearing and Reargument*

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 25th day of June, A.D., 1942.

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641 IN THE MATTER

of

THE NORTH AMERICAN COMPANY

and its

SUBSIDIARY COMPANIES,

Respondents.

File No. 59-10

Public Utility Holding Company Act of 1935, Section 11(b)(1)

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ORDER DISPOSING OF PETITIONS FOR REHEARING AND REARGUMENT

The Commission having on April 14, 1942, adopted its findings, opinion and order in proceedings pending pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935 in the matter of The North American Company and Its Subsidiary Companies, Respondents, which, among other things, designated the respective single or principal integrated public utility systems of the several

holding companies in the holding company system of The North American Company; and

The said order having afforded an opportunity, notwithstanding the provisions of Rule XII (d) of the Commission's Rules of Practice, to The North American Company to request within fifteen days further argument or the presentation of additional evidence on the question whether any single integrated public utility system other than the integrated electric utility system of the Union group, denoting thereby the electric utility properties of Union Electric 644
Company of Missouri and its subsidiaries, shall serve as the "principal" system of The North American Company; and having, notwithstanding the said Rule of Practice, afforded to Illinois Iowa Power Company the opportunity to request within fifteen days further argument or the presentation of additional evidence on the question whether any single integrated public utility system operated by it or any of its subsidiaries, other than the major integrated electric utility system referred to in the said findings and opinion, shall serve as its principal system; and having, notwithstanding the said Rule of Practice, afforded to Northern Natural Gas 645
Company the opportunity to request within fifteen days further argument or the presentation of additional evidence on the question whether the integrated public utility system of Argus Natural Gas Company, Inc., rather than that operated by Peoples Natural Gas Company, shall serve as its principal system; and

The North American Company and Illinois Iowa Power Company, having on April 28, 1942, petitioned for leave to present further argument and additional evidence upon certain matters; Northern Natural Gas Company, having on

646 *Order Disposing of Petitions for Rehearing and Reargument*

May 8, 1942, petitioned for leave to reopen the proceedings with respect to it and its subsidiaries, which petition was amended on May 27, 1942; the Commission having considered the petitions and being fully advised in the premises, and having this day issued its opinion with respect to the issues raised by said petitions:

IT IS ORDERED, for the reasons set forth in the said opinion, that the said petitions be, and the same hereby are, denied, except insofar as hereinafter set forth:

647 The petition of Illinois Iowa Power Company having indicated the existence of evidence respecting the retainability of certain oil drilling facilities owned by the company, which evidence was not before the Commission in the course of the original proceedings herein, and the Commission in its discretion deeming it advisable to afford to Illinois Iowa Power Company an opportunity to present such evidence for inclusion in the record herein; and

The petition of Northern Natural Gas Company having indicated the existence of evidence respecting the retain-
648 ability of certain pipe line facilities owned by its subsidiary, Argus Natural Gas Company, Inc., which evidence was not before the Commission in the course of the original proceedings herein, and the Commission in its discretion deeming it advisable to afford to Nothern Natural Gas Company an opportunity to present such further evidence for inclusion in the record herein;

IT IS FURTHER ORDERED that the record be reopened and a hearing convened at a date to be set by further order of the Commission for the limited purpose of receiving such evidence as Illinois Iowa Power Company and Northern Natural

Gas Company may proffer with respect to the retention and operation of said oil and pipe line facilities, respectively, and the evidence to be introduced shall be limited to those issues, as more fully set forth in the said opinion.

By the Commission.

(SEAL) ORVAL L. DUBOIS,

Orval L. DuBois,
Secretary.

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